

Disclaimer

TOWN OF HAMILTON

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TOWN OF HAMILTON



ZONING BY-LAW

FIRST ADOPTED 1954
INCLUDING AMENDMENTS AS OF January, 2005

ADOPTED PURSUANT TO THE MASSACHUSETTS ZONING ACT
M.G.L. CHAPTER 40A AS AMENDED

**THE TABLE OF CONTENTS IS BEING
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SHORTLY**

HAMILTON ZONING BY-LAW

INTRODUCTION: LAND USE LAWS AND REGULATIONS IN HAMILTON

Land use in Hamilton is subject to various Town, State and Federal laws and regulations, of which this Zoning By-law is only one. To assist officials and the public, the regulations most commonly applicable to land use and development in Hamilton are listed and described below. The individual land user is responsible for demonstrating compliance with whichever laws and regulations apply to the proposed land use, and approval under one by-law or regulation does not imply that any of the others have been met. The list below is not exhaustive; in some cases, State and Federal utility, road, environmental impact, air/water quality, toxic waste and other regulations may apply.

THE HAMILTON ZONING BY-LAW, pursuant to M.G.L. Ch. 40A, guides the development pattern of the Town by creating districts, including a Conservancy (wetlands) district, which group compatible uses together; and by setting various standards governing lot dimensions and quality, development density, parking, signs, and specifications for certain land uses. The Zoning By-law is enforced by the Building Inspector, (responsible to the Selectmen) through Building and Occupancy Permits and inspections, by the Board of Appeals through Special Permits, Site Plan review, variances and appeals, and indirectly by other Boards who remind the applicant of zoning compliance in the course of their reviews. (The Planning Board may not approve subdivisions which violate the Zoning By-law.) The Zoning Map is part of the Zoning By-law.

THE HAMILTON SUBDIVISION RULES AND REGULATIONS set standards and procedures for subdividing parcels of land into two or more new parcels or lots, and constructing ways, utilities and drainage, pursuant to M.G.L. Ch. 41. These regulations are enforced by the Planning Board, via approval of subdivision plans.

THE STATE BUILDING CODE sets forth regulations and design standards for the construction, reconstruction, alteration, repair, demolition and removal of buildings. The Code is administered by the Building Inspector through the Building Permit and Occupancy Permit procedures, and subsequent inspections.

THE STATE ENVIRONMENTAL CODE (TITLE 5, 310 CMR, Sec 15.00) sets forth minimum standards for individual systems for the disposal of sanitary sewage (septic system). Title 5 is enforced by the Hamilton Board of Health, in conjunction with their own regulations (see below), through the septic system permit process.

THE HAMILTON BOARD OF HEALTH REGULATIONS (pursuant to TITLE 5 and M.G.L. Ch. 111 and Ch. 41 Sec. 81-U) set forth a variety of standards and procedures to protect the public health and safety, including regulations on: Water supply and wells, sewage disposal, septic system repair, swimming pools, keeping of animals, sale of food and ice, disease control, building occupancy standards, camps, daycare establishments, garbage, and the general development suitability and drainage of subdivisions. The Health Regulations are enforced by the Hamilton Board of Health and Health Agent, via permit and license procedures and inspections, including subdivision plan reviews, and septic system construction and repair permits, food service permits, and animal permits. The Health Regulations are also indirectly enforced by the Building Permit issuance system in that Building Permits cannot be issued without a septic system plan approved by the Board of Health.

THE STATE WETLANDS PROTECTION ACT (M.G.L. Ch. 131, Sec. 40) is administered by the Hamilton Conservation Commission. It requires that construction or land alteration in or near wetland and flood plains (as defined by the law) be reviewed and regulated by the Conservation Commission. Regulations for administering the Act have been promulgated by the Massachusetts Department of Environmental Protection, and are enforced by the Conservation Commission.

THE TOWN WETLANDS BY-LAW paraphrases the State Wetlands Act (described above) within the Town's General By-laws, in order to clarify local jurisdiction, and adds to the wetland values to be protected. It is also enforced by the Hamilton Conservation Commission. The State and Town version of the wetlands laws are generally enforced simultaneously, but they are both to be distinguished from the 'Conservancy District,' a wetlands overlay district that is part of the Zoning By-law, and is, therefore, separately enforceable.

THE GENERAL BY-LAWS OF HAMILTON are generally enforced by the Selectmen. They cover a number of subjects pertaining to land use, including: Street naming and numbering; earth, loam and gravel removal (requires Selectmen's permit); street acceptance by the Town; temporary signs; roadside stands; junkyards; junk cars; pool fencing. The Town Conservation By-law (Wetlands By-law, see above), is located in the General By-laws, but is enforced by the Conservation Commission.

THE HISTORIC DISTRICT REGULATIONS, (under M.G.L. Ch. 40C), restrict building alterations and development in the Historic District along Bay Road (shown on Zoning Map and a more detailed map available from Town Clerk). Enforcement is by an appointed Historic District Commission.

THE SCENIC ROADS ACT (M.G.L. Ch. 40, Sec. 15C) provides for limited protection of certain designated scenic roads, as approved by the Hamilton Town Meeting. Removal of trees or stone walls in the process of paving or maintaining such roads requires public hearing and Planning Board approval. The Hamilton Scenic Roads are shown on the Zoning Map.

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Editorial Note: It is a fact of modern existence that most construction and land-use is subject to local government review and regulation, and that sometimes several boards with overlapping jurisdictions may be involved, to the consternation of the applicant. For any proposed use or structure, there will be some approvals/regulations that are always required, and some approvals/regulations that will only be required in certain cases or places (such as wetlands or the Groundwater Protection District). The Town of Hamilton has as part of its building permitting process, the requirement that applicants must get sign-offs from the various boards before the permit is granted. This enables the specific board and the applicant to discuss the approvals and regulations that apply to a given project.

(ZONING MAP AND GROUNDWATER PROTECTION OVERLAY DISTRICT MAP
ARE ATTACHED WITH BOOK)

SECTION I. PURPOSES

The purposes of this Zoning By-law are to promote the health, safety, morals, convenience and general welfare of the inhabitants of Hamilton, to lessen the danger from fire and congestion, and from the hazards of flood water inundation, to protect and conserve the value of property, to preserve and increase the amenities of the Town, to conserve natural conditions, to promote the educational, cultural and economic welfare of the public through the preservation and protection of buildings, sites, and districts of historic interest, and to improve and beautify the Town by encouraging the most appropriate uses of land within the Town in accordance with the General or Master Plan, and under the provisions of Chapter 40A of the Massachusetts General Laws as amended.

In accordance with these purposes, the use, construction, erection, establishment, movement, repair, alteration, enlargement, height, appearance, location and occupancy of buildings and structures, and the uses and occupancy of premises in the Town of Hamilton are hereby regulated and restricted as hereinafter provided.

- A. Lands deemed subject to seasonal or periodic flooding shall not be used for residence or any other purpose requiring a subsurface disposal system which would endanger the public health and safety or cause possible damage to adjoining property.
- B. Lands deemed subject to seasonal or periodic flooding; lands within the Conservancy District as established by Section V.C. of the By-laws; or wetlands as defined in The Massachusetts General Laws, Chapter 131, Section 40 shall not be crossed by roads or driveways.

SECTION II. ESTABLISHMENT OF DISTRICTS

A. CLASSES OF DISTRICTS AND ZONING MAP

The Town of Hamilton is hereby divided as shown on the Zoning Map dated December 28, 1964, filed with the Town Clerk, as amended by the Zoning Map -- Conservancy District dated February 1, 1971, and further amended May 7, 1974, and further amended May 14, 1979, and further amended May 13, 1985, and further amended November 14, 1999 hereunder and hereby made a part of this By-law, in classes of districts designated as follows:

R-1a	Residence Districts (20,000 sq. ft.)	Sec. V-A
R-1b	Residence Districts (40,000 sq. ft.)	Sec. V-A
R-A	Residence-Agricultural Districts (80,000 sq.ft.)	Sec. V-A
B	Business District	Sec. V-B
C	Conservancy District	Sec. V-C
FPD	Flood Plain District	Sec. V-F
GP	Groundwater Protection Overlay District	Sec. V-D
EH	Elder Housing Special District	Sec. V-E

The EH District is not shown on the Zoning Map, but shall be located on a case by case basis by 2/3 vote of Town Meeting, as set forth in M.G.L., Ch 40A. Sec. 5, following approval of a specific Elder Housing proposal under Sec. V.E. and Sec. VII of this By-law.

B. BOUNDARIES OF DISTRICTS

(Ed. Note: Boundaries of Zoning Districts are generally set by 2/3 vote of Town Meeting. See M.G.L. Ch. 40A Sec. 5 for procedure. Provisions for adjusting boundaries of Conservancy District and Groundwater Protection District are found in Sec. V.C. and V.D., respectively. See Section V.E. and II.A. for method of setting boundaries for Special Elder Housing District.) (See Appendix A for description of R-A.))

1. Where the boundary lines are shown upon said map within the street lines of public and private ways, the center lines of such ways shall be the boundary lines.
2. Where the boundary lines are shown approximately on the location of property or lot lines, and the exact location of property, lot, or boundary lines is not indicated by means of dimensions shown in figures, then the property or lot lines existing at the time of the adoption of this By-law shall be the boundary lines.
3. Boundary lines located outside of such street lines and shown approximately parallel thereto shall be regarded as parallel to such street lines, and dimensions shown in figures placed upon said map between such boundary lines and street side lines are the distances in feet of such boundary lines from such street side lines, such distances being measured at right angles to such street lines unless otherwise indicated.
4. In all cases which are not covered by other provisions of this Section, the location of boundary lines shall be determined by the distance in feet, if given, from other lines upon said map, by the use of identifications as shown on the map, or by the scale of the map.
5. Where a district boundary line between a residential and a business district divides any lot existing at the time such line is adopted, the regulations for the less restricted portions of such lots shall extend no more than thirty (30) feet into the more restricted portion, provided the lot has frontage on a public way in the less restricted district.

SECTION III. EXISTING USES AND STRUCTURES (SEE ALSO APPENDX B.)

A. A use or structure not conforming to the requirements for the district in which it is located but lawfully existing or begun, or subject to a variance, or a building or special permit issued before the first publication of notice of the public hearing on this By-law or any amendment thereto, shall constitute a non-conforming use or structure and may be continued as a non-conforming use or structure, provided that:

1. Such use or structure shall not be extended or altered unless the Board of Appeals makes a finding that the extension or alteration shall not be substantially more detrimental to the neighborhood than the existing non-conforming use or structure. Any alteration or extension of a commercial, industrial or institutional structure in a residential zone is also required to have Site Plan Review; see Section VI.H. The Board of Appeals shall hear the above mentioned finding and the Site Plan Review simultaneously.
2. Wherever a non-conforming use has been changed to a more restricted use, it shall not again be changed to a less restricted use, except as provided in the preceding subsection.
3. Wherever a non-conforming use has been discontinued for a period of more than two years or has been abandoned it shall not be re-established, and any future use shall conform with this By-law.
4. Alteration or Extension: A non-conforming single or two-family residential structure may be altered or extended as a matter of right under the following circumstances:
 - a. The existing structure is on a conforming lot but is non-conforming because it encroaches on a setback and the proposed alteration or extension will not change the setbacks which fail to conform and the entire structure meets all other requirements of the By-law including but not limited to height and lot coverage.
 - b. The existing structure is non-conforming solely because it is located on a lot which is non-conforming as to size and/or frontage as the result of a zoning change, and the existing structure and alteration or extension meets all other current requirements of the By-law including but not limited to setbacks, height and lot coverage.
5. Reconstruction or Repair: A residence in a district where residences are permitted, but on a non-conforming lot or with non-conforming yards, may be reconstructed or repaired without change in the lot size or yards which fail to conform.
6. Any reconstruction or repair of a partially destroyed or damaged structure put to a non-conforming use must in fact be commenced within two years of such damage or destruction and the reconstruction completed and the structure occupied within a reasonable time thereafter.

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7. Construction or operations under a building or special permit shall conform to any subsequent amendment of this By-law unless the use or construction is commenced within six months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.
8. Any lot upon which more than one dwelling existed at the time of the initial adoption of this Zoning By-law, may be divided into separate lots, each of which lots shall contain one such dwelling, notwithstanding that one or more of such lots may not then conform to the dimensional provisions of this Zoning By-law and provided further that all such lots, and the dwellings thereon, comply with the following:
 - (a) All of the dwellings must comply with the definition of "Dwelling," as set forth in Section VII of this Zoning By-Law; provided that said dwelling must be a structure designed primarily for continuous and permanent habitation and shall not include trailers, apartments or temporary housing of any kind.
 - (b) All of the lots must have been owned by the Petitioner, by blood relatives of the Petitioner, or by trusts or related entities in which the Petitioner and/or a blood relative of the Petitioner has owned a controlling interest for a minimum period of twenty (20) years prior to the endorsement of the ANR Plan referred to Paragraph (c) below.
 - (c) Petitioner's lots must qualify for an ANR (Approval Not Required) endorsement from the Hamilton Planning Board in accordance with MGL Chapter 41 Section 81L.
 - (d) All lots shown on the ANR Plan must comply with the lot area, lot coverage, and building setback requirements of the Hamilton Zoning By-Law then in effect.
 - (e) Once the ANR Plan has been endorsed by the Planning Board, and recorded at the Essex South District Registry of Deeds, all lots shown thereon must remain in single-family residential use, in perpetuity, and otherwise in compliance with the Hamilton Zoning By-Law Use Regulations, as amended, and a notation to this effect made upon such plan. (Section 8. added January 31, 2005)

(Ed. Note: Lots which do not comply with current zoning requirements may be exempt from those requirements in certain cases. The exemption may be temporary, and after the exemption expires, the lot may be effectively unbuildable as a separate lot. Lot exemptions from zoning are known as "the Grandfather clause", which is set forth in M.G.L. Ch. 40A, Sec. 6, included as Appendix B of this Z.B.L. It is the responsibility of the landowner to demonstrate that a non-conforming lot is exempt from current zoning under M.G.L. Ch. 40A, Sec. 6.)

SECTION IV. NEW CONSTRUCTION AND NEW USES.

Any and every new use and any and every new building, structure and premises shall be used for or occupied, and every building or structure shall be erected, constructed, established, altered, repaired, enlarged, or moved exclusively and only in conformity with the requirements, character and conditions laid down for each of the several districts established by this By-law. Any use not specifically listed herein or otherwise permitted in a district shall be deemed as prohibited.

(Ed. Note: In certain cases, the Board of Appeals may allow exemptions to the requirement that all new construction comply with zoning regulations. See "Variances", Sec. IX.D.4.)

SECTION V. USE REGULATIONS

(See also Section I "Purpose," Items A and B)

A. R-1a and R-1b Single Family Residence Districts and R-A Residence Agricultural Districts are intended as districts of single family homes and for continuance of forest and agricultural activities, with not more than one dwelling, accessory buildings, stone walls, fences, and structures, customarily incidental for residential and forest or agricultural uses upon one lot.

Permitted Use:

1. One Single Family detached dwelling. The term "one single family detached dwelling" shall not include a mobile or immobile type of trailer.
2. Agriculture, horticulture and floriculture, including gardens, growing and storing of fruits, berries, vegetables, hay, fodder and ensilage; woodlots, forestry and greenhouse.
3. Rooming or boarding house with not over four lodgers.
4. Church, parish house, religious or denominational school. These uses require Site Plan Review; see section VI.H.
5. Public schools, museums, libraries and parks, playgrounds, conservation areas, water supply areas and other land owned and operated for the public enjoyment or service by a public or semi-public agency. The first five listed uses require Site Plan Review; see section VI.H.
6. Private schools and colleges on land owned or leased by a non-profit educational corporation. These uses require Site Plan Review; see section VI.H.
7. Golf, tennis, swimming, riding, polo, skiing, skating, and all other athletic and recreational activities, provided that special events or new or extended use, where charges or admission fees are required shall be subject to a special permit with appropriate limitations from the Board of Selectmen as provided in Paragraph 11 (h) of this Section.
8. Customary home occupation conducted in a dwelling or building accessory thereto by a person residing on the premises provided that:
 - a. such use is clearly incidental and secondary to the use of the premises for residential purposes
 - b. not more than two persons other than residents of the premises are regularly employed thereon in connection with such use

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- c. no offensive noise, vibration, smoke, dust, fumes, odors, heat, glare or unsightliness is produced.
 - d. there is no public display of goods or wares and there are no signs except as permitted in Paragraph E of Section VI.
 - e. there is no exterior storage of material or equipment (including the parking of more than two commercial vehicles) and no other exterior indication of such use or variation from the residential character of the premises.
9. Accessory uses on the same lot with and customarily incidental to a permitted main use on the same premises, and including but not limited to:
- a. private swimming pools, tennis courts and private garages.
 - b. activities associated with agriculture, horticulture and floriculture, such as barns, private stables, and shelters, and other farm buildings on lots not less than 80,000 sq. ft. in area; and including buildings for keeping animals and poultry, duly licensed by the Board of Health, for occupant's use only; provided that no such accessory farm building, barn or shelter shall be nearer than (50) feet to any lot line. (Amended September 26, 1988)
10. Signs as provided in Paragraph E of Section VI.
11. Subject to a Special Permit by the Board of Appeals as provided in Section IX-D below, the following:
- a. This section was deleted by Town Meeting vote May 8, 1995.
 - b. Hospital, clinic, sanitarium, nursing home, cemetery, and camps of educational and charitable institutions in accordance with Site Plan Review; see Section VI.H.
 - c. Community or private club, not conducted for profit. This use requires Site Plan Review; see section VI.H.
 - d. The raising or keeping of poultry, horses, or cows, for other than the use of the occupants of the residence; maintenance of dog kennels or riding stables;
 - e. Apartment Options
 - 1. Conversion for Temporary Additional Living Area (Added May 6, 1991)

In order to provide a way for families to create separate living quarters in their home to accommodate a temporary family, health, or security need, construction of one temporary additional living area (as defined in Section VII) in a single family dwelling or an accessory building (as defined in Section V.A.9), provided that:

- a. Administration and Application
 1. Written approval of all the proposed arrangements for sanitary waste, water supply, and drainage is obtained from the Board of Health prior to the submission of the special permit application to the Zoning Board of Appeals.
 2. The Occupancy Permit for the principal dwelling unit was issued at least two (2) years prior to application for the Special Permit.
 3. One of the dwelling units is occupied by the owner of the property, except for bona fide temporary absence.
 4. The temporary use of the premises is for the owner(s); or a family member of the owner(s); or a caretaker or a health care provider to the occupant of one of the units; or an elderly person (age 60 years or older); or a mentally or physically handicapped person.
 5. There is no other accessory dwelling unit on the lot on which the proposed accessory unit is to be located.
 6. The applicant shall, in addition to obtaining a special permit, also obtain a building permit, and needed Conservation Commission approvals, and an occupancy permit prior to the occupancy of the proposed accessory dwelling unit.
 7. Renewal of the special permit shall take place every four (4) years from the date of issuance of this Special Permit and upon change of ownership or tenants. Renewal of the Special Permit will require an inspection by the Building Inspector and a written certification by the owner and Building Inspector, verifying that the terms of the Special Permit and the zoning bylaw are being met. The Building Inspector shall verify that all means of access and egress have been maintained, and that there has been no change in the occupancy, design or dimensional standards under Section V.A.11.e.1.b. below. (Amended 5/1995, 5/2003)
 8. The Building Inspector shall be notified upon cessation of occupancy.

9. This Special Permit shall be valid only for the occupancy of the apartment by the apartment tenant(s) for whom it was issued; upon cessation of occupancy by such tenant(s), the permit shall lapse and be null and void.

10. The kitchen facilities shall be removed when there is no longer a valid special permit for the unit.

b. Design and Dimensional Standards

1. A plot plan and scaled architectural drawings of the existing dwelling unit and proposed addition shall be submitted, showing location of the building on the lot, proposed addition, location of septic system and parking and compliance with Section V.A.11.e.1.a. 1-10 above and the following items:

2. The maximum gross floor area shall not exceed the lesser of 1,000 square feet or one third of the gross floor area of the dwelling unit and the proposed accessory unit combined, as measured after conversion.

3. Any extension to the building shall not create more than a 25% increase in the gross floor area of the existing structure.
(Amended 5/95)

4. The maximum number of bedrooms shall be one (1).

5. The maximum number of people shall be two (2).

6. The lot on which the proposed accessory dwelling unit is to be located contains at least 10,000 square feet.

7. The external appearance of the building in which the accessory dwelling unit is located shall not be significantly altered from a single-family dwelling unit.

8. The kitchen facilities shall be of a type readily removable.

9. Adequate provision has been made for egress to the outside from the accessory dwelling unit; any external stairways shall be screened from view, buffered, or located out of sight from any street.

10. One off street parking space shall be provided for the new dwelling unit, in addition to the required parking for the principal unit; every effort shall be made to minimize the

visibility of the additional parking space by location and screening.

11. Construction and occupancy of the additional dwelling unit will not be detrimental to the neighborhood in which the lot is located, and will not be injurious or dangerous to the public health or hazardous because of traffic congestion, danger of fire, or other reasons, and will not result in violation of the dimensional requirements of zoning in effect at the time of the application.

2. In order to provide for a way to preserve large older homes in the Town, conversion of a one-family dwelling existing at the time of the adoption of the ordinance (1954) into a two-family dwelling, provided that: (Added May 6, 1991)
 - a. Administration and Application
 1. Written approval of all the proposed arrangements for sanitary waste, water supply, and drainage is obtained from the Board of Health prior to the submission of the Special Permit application to the Board of Appeals.
 2. The applicant shall, in addition to obtaining a Special Permit, also obtain a building permit, and needed Conservation Commission approvals, and an occupancy permit prior to occupancy of the proposed dwelling unit.
 - b. Design and Dimensional Standards
 1. A plot plan and scaled architectural drawings of the existing dwelling unit and alterations are submitted, showing location of the building on the lot, proposed alterations, location of septic system and parking, and compliance with Section V.A.11.e.2.a. 1 and 2 above, and the following items:
 2. The lot on which the proposed conversion is to be located contains at least 20,000 square feet, and the existing dwelling unit contains at least 4,000 square feet.
 3. The external appearance of the building in which the dwelling units are located shall not be significantly altered from its previous single-family character.
 4. Adequate provision has been made for egress to the outside from the additional dwelling unit; any external stairways shall be screened from view, buffered, or located out of sight from any street.

5. One off street parking space shall be provided for the new dwelling unit, in addition to the required parking for the principal dwelling unit; every effort shall be made to minimize the visibility of the additional parking space by location and screening.

6. Construction and occupancy of the additional dwelling unit will not be detrimental to the neighborhood in which the lot is located, and will not be injurious or dangerous to the public health or hazardous because of traffic congestion, danger of fire, or other reasons, and will not result in violation of the dimensional requirements of zoning in effect at the time of the application.

3. Accessory Apartments on Large lots (Added 5/96)

To provide for accessory apartments for family/caretakers on large lots, an accessory apartment in a single family dwelling or an accessory building (as defined in Section VII.1.), provided that

a. Administration and Application

1. Written approval of all the proposed arrangements for sanitary waste, water supply, and drainage is obtained from the Board of Health prior to the submission of the Special Permit application to the Board of Appeals.

2. Written approval of the plot plan referenced to in b.1. below with regard to relevant guidelines as found in Section VI.H.5. of the ZBL is obtained from the Planning Board prior to the review of the Board of Appeals.

3. One of the dwelling units is occupied by the owner of the property, except for bona fide temporary absence.

4. The applicant shall, in addition to obtaining a special permit, also obtain a building permit, and needed Conservation Commission approvals, and an occupancy permit prior to the occupancy of the proposed accessory apartment.

b. Design and Dimensional Standards

1. A plot plan and scaled architectural drawings of the existing dwelling unit and proposed addition shall be submitted, showing location of all building(s) on the lot, the

proposed addition, location of all septic systems and parking and compliance with the following items:

2. The lot on which the proposed conversion is to be located is at least 10 acres.
3. Any external stairways shall be screened from view, buffered or located out of sight from any street.
4. One off street parking space shall be provided for the additional dwelling unit, in addition to the required parking for the principal dwelling unit; every effort shall be made to minimize the visibility of the additional parking space by location and screening. The driveway shall conform to Section VI.B.12 of this ZBL.

c. Not Detrimental to Neighborhood

The Board of Appeals shall make a finding that the construction and occupancy of the additional dwelling unit will not be detrimental to the neighborhood in which the lot is located, and will not be injurious or dangerous to the public health or hazardous because of traffic congestion, danger of fire, or other reasons, and will not result in violation of the dimensional requirements of zoning in effect at the time of the application.

d. Special Restrictions

1. The principal dwelling unit and the accessory apartment shall be held in the same ownership.
2. The lot upon which the principal dwelling unit and accessory apartment are located shall not be reduced in size to less than 10 acres; reduction in lot size to less than 10 acres will cause the accessory apartment to be in violation of this ZBL.

- f. Roadside Stand for sale of farm produce raised in the Town, set back at least thirty (30) feet from the street line and provided that space for customers' cars is available off the right-of way of the street and so arranged as not to permit backing of automobiles onto any public or traveled way. This use requires Site Plan Review; see section VI.H.
- g. Garage space for more than four automobiles. If commercial garage, Site Plan Review is required; see section VI.H.

- h. Temporary use for amusements and recreation under permit with appropriate limitations from the Board of Selectmen.
- i. Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, provided the Board of Appeals finds that the proposed use does not substantially derogate from the public good. This use may require Site Plan Review; see section VI.H.
- j. Wind Energy Conversion Systems, subject to the standards set forth in Section VI.I.
- k. Communication Towers and Telecommunication Antenna Facilities, subject to standards set forth in Section VI.J., and subject to a Special Permit from the Planning Board. (Amended May 7, 2001).

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12. **OPEN SPACE AND FARMLAND PRESERVATION DEVELOPMENT**

(adopted January 31, 2005, and replaces former 12., *Flexible Plan*

Subdivisions)

1. Purpose and Intent. The purposes of Open Space and Farmland Preservation Development (OSFPD) are to:
 - a. Protect permanently open space, agricultural and forestry land, historical and archeological resources, existing and proposed trails, wildlife habitat and corridors, and other natural resources including wetlands and water bodies; in a manner consistent with the goals of the Hamilton Master Plan;
 - b. Encourage creative, environmentally sensitive design as the preferred form of residential development;
 - c. Encourage a more efficient form of development that consumes less open land and respects existing topography and natural features better than a conventional or grid subdivision;
 - d. Provide a variety of housing choices, particularly for older persons;
 - e. Reduce the anticipated negative fiscal impact on the Town associated with conventional residential development; and
 - f. Provide a development option to large-parcel landowners who wish to see a continuation of their stewardship of the land.
2. Applicability.
 - a. In the R-1a, R-1b, or RA Districts, a Special Permit is required from the Planning Board for any development of ten or more acres and/or five or more dwelling units. For purposes of Section V.12, a development includes:

- i. Five or more dwelling units on a single lot of land; or
 - ii. A division of a tract of land containing ten or more acres, whether comprised of a single lot or contiguous lots held in common ownership, into five or more residential lots. Developments may not be segmented to avoid compliance with this Bylaw section. Accordingly, divisions that would cumulatively result in an increase by five or more residential lots above the number existing twenty-four months earlier shall be subject to the requirements established herein. A division of land includes a subdivision as defined in M.G.L. c. 41, Section 81-L or 81-U, or a division of land under M.G.L. c. 41, Section 81-P.
 - iii. After the Planning Board has acted on the OSFPD Special Permit application, the developer maintains the option of proceeding with either an OSFPD or a conventional subdivision plan.
- b. Pre-Existing Lots. The provisions of Section V. Section 12 shall not apply to the construction of five (5) or more dwelling units on individual lots if the lots were in existence prior to adoption of this Bylaw section, or to the conversion of an existing structure into five or more dwelling units.
 - c. Voluntary Process. Nothing in this Bylaw section shall prohibit the Planning Board from granting an OSFPD Special Permit on less than ten acres of land or comprised of fewer than five lots or dwelling units.
 - d. Future Subdivision. The common open space and all lots in an OSFPD may not be further subdivided, and a notation to this effect shall be placed on the plan of record, which shall be recorded at the Registry of Deeds.
- 3. Planning Board Regulations. The Planning Board shall adopt and from time to time may amend OSFPD Rules and Regulations to implement this Bylaw section. Such regulations shall include but will not be limited to Submission Requirements, Plan Requirements, such as size, form, number and contents; Development Standards, Site Standards, and Standards for Building Placement and Design. Such rules and regulations are required and authorized under M.G.L. Ch. 40A, s. 9, and shall be adopted after proper notice, posting, public hearing and vote by the Planning Board.
- 4. Permitted Uses. An OSFPD may include the following uses:
 - a. Single-family detached dwellings.
 - b. Townhouse dwellings, not to exceed four dwelling units per building.
 - c. Multi-family buildings, not to exceed six dwelling units per building.
 - d. Open space and conservation areas.

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- e. Passive recreation, including trails for walking, hiking, cross country skiing, and horseback riding, and areas for other low-impact activities such as picnicking and wildlife observation.
 - f. Agricultural, equestrian, and horticultural uses.
 - g. Accessory recreational uses, such as a tennis court or playground, in the developed area.
5. Pre-Application Conference. The applicant shall request and attend a pre-application review at a regular business meeting of the Planning Board. The Planning Board shall invite the Board of Health, Building Inspector, Conservation Commission and Open Space Committee, Department of Public Works, Fire Chief, Police Chief, Historic District Commission, Office on Disability, and Zoning Board of Appeals to attend. The primary purpose of the pre-application conference is to identify the site's natural or historically important features, riding or walking trails on the site and abutting parcels, public safety, traffic or infrastructure issues, and areas the Town prefers to see preserved as open space or for agricultural or equestrian uses. The secondary purpose of a pre-application review is to minimize the applicant's cost of engineering and other technical experts, and to commence discussions with the Planning Board at the earliest possible stage of development. Meetings may be held by mutual agreement of the Planning Board and the applicant. At the pre-application review, the applicant may outline the proposed OSFPD, seek preliminary feedback from the Planning Board, and set a timetable for submittal of a formal application. At the expense of the applicant, the Planning Board may engage technical experts to review the informal plans of the applicant and to facilitate submittal of a formal application for an OSFPD Special Permit.
6. OSFPD Special Permit Application Procedures. An application for a Special Permit for an OSFPD shall include a Yield Analysis and an OSFPD Concept Plan. The Planning Board may engage technical experts, at the applicants' expense, as reasonably necessary in connection with its review of the applicants' proposed analysis or plan(s).
- a. Sources of Data. Both the Yield Analysis and the OSFPD Concept Plan may be prepared from existing data, such as deed information, USGS topographical maps, FEMA floodplain maps, assessor's maps, orthophotographs, soil maps, or Department of Environmental Protection (DEP) Wetlands Conservancy Program maps. The locations of wetlands, streams and forest limits or locations will not be verified during the Concept Plan special permit process until the Applicant has delineated the same in the field and has obtained from the Hamilton Conservation Commission a Positive Determination verifying delineation, or the Applicant has been issued an Order of Resource Area Delineation under the procedures outlined in M.G.L. Ch. 131 s. 40 and Town of Hamilton By Laws Chapter 17. It is not necessary to verify these constraints for Concept Plan submittals, but the applicant must be aware that these locations should be as

accurate as possible in order to avoid significant changes to the Concept Plan in subsequent applications for approval of an OSFPD Definitive Subdivision Plan or Cluster Design Plan.

- b. Yield Analysis. The Yield Analysis is a schematic representation of a conventional subdivision. It shall show the maximum number of lots (or dwelling units) that could be placed upon the site under current zoning for a conventional subdivision plan. That maximum number of lots shall constitute the Base Maximum Density. The Yield Analysis shall determine Base Maximum Density for the OSFPD, given the presence of natural building constraints on the site such as wetlands, floodplains, Conservancy Districts, steep slopes, and zoning requirements. The proponent shall have the burden of proof with regard to the Basic Maximum Density.
- c. Allowed OSFPD Density. The maximum number of lots (or dwelling units) in an OSFPD shall be 1.2 times the Base Maximum Density. Computations shall be rounded to the nearest whole number.
- d. OSFPD Concept Plan. The Concept Plan shall be prepared by a Registered Professional Landscape Architect, Civil Engineer, or Architect, or by a multi-disciplinary team of which one member must be a Registered Professional Landscape Architect, and shall include the information listed below. The Concept Plan shall be produced through the five-step OSFPD Special Permit Design Process (Section 12.7. below), and shall incorporate the Common Open Space Requirement, Dimensional Standards, and OSFPD Special Permit Design Standards (Sections 12.8. through 10.) below.
 - i. Title Block including the name of the Owner of record, name of Applicant, address of the property, and the Assessors' Map and Lot Number; name of the company preparing the plan, address and phone number, signature and stamp of professional(s) preparing the plan, date of plan, scale;
 - ii. The location of the proposed development;
 - iii. The size of the site in acres;
 - iv. An existing conditions inventory and description of conservation areas identified during the OSFPD Special Permit Design Process pursuant to Section 7.a. below;
 - v. The total number and approximate locations of the proposed buildings, dwelling units and/or lots, and the approximate size of each in square feet;
 - vi. The acreage and proposed use(s) of permanently protected open space;
 - vii. A statement on the disposition or manner of ownership of the proposed open space;
 - viii. The areas or approximate delineation of lots that will be used as building areas, and the areas or approximate delineation of lots that are to remain as permanently protected open space;

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- ix. A general description of how drainage will be handled, including a soils statement (soil conservation survey is acceptable) and the general area of the site to be used for stormwater management facilities; and
- x. Sufficient detail of proposed built and natural features as described in Section 12.7. (OSFPD Special Permit Design Process) below to enable the Planning Board to make the required determinations of Section 12.12. (Decision of the Planning Board for OSFPD Special Permit)

7. OSFPD Special Permit Design Process.

- a. Identification of conservation areas. The first step in the design process requires identification of conservation areas on the site, including wetlands, areas located in the Hamilton Conservancy District, riverfront areas, and floodplains regulated by state, federal, or local law; unprotected natural landscape features such as steep slopes, mature woodlands, prime farmland, meadows, wildlife habitats and wildlife corridors or connections thereto; cultural features such as historic and archeological sites and scenic views; and recreational features such as established trails used for horseback riding, walking and cross-country skiing. To the maximum extent feasible, conservation areas shall include areas identified by the Planning Board during the pre-application conference.
 - b. Identification and delineation of the proposed development area. The second step in the design process is to define and delineate the area that will contain buildings, roadways, other site improvements and amenities for residents of the development. To the maximum extent feasible, the proposed development area shall consist of land outside the identified conservation areas.
 - c. Location of dwelling units. The third step in the design process is to identify and delineate the approximate location of dwelling units in the proposed development area. The number of units should conform to the Allowed OSFPD Density calculated in Section 12.6.c, (OSFPD Special Permit Application Procedures), as modified by any public benefit incentive increases as per Section 12.15. (Public Benefit Incentives). The location of dwelling units should account for proximity to common open space and other amenities, including community buildings for use by residents of the development. Toward this end, the number of dwelling units with direct access to the amenities of the development should be maximized.
 - d. Roads and trails. The fourth step in the design process is to identify and delineate the approximate location of roads and trails. Roads shall be aligned to access the dwelling units. The layout of new trails should anticipate internal and external connections to existing and/or potential future roads, trails and sidewalks.
 - e. Lotting. If applicable, the final step in the design process is to identify the approximate location of lot lines.
8. Common Open Space Requirement. To qualify for an OSFPD Special Permit, a development must provide at least 50% of the total land area as permanently protected, usable, common open space that is functional for purposes intended by

this Bylaw section. The common open space shall have no structures, parking, private yards, patios, or gardens that are restricted for the exclusive or principal use by residents of individual dwelling units. The following standards apply to the common open space in an OSFPD:

a. Use, Shape, Location of Common Open Space.

- i. To the maximum extent feasible, the common open space shall be undisturbed, unaltered and left in its natural condition or existing condition. It shall be appropriate in size, shape, dimension, location, and character to assure its use as a conservation area, or where appropriate, a recreational area, and serve as a visual and natural amenity for the development and the Town.
- ii. The common open space shall be contiguous and linked as a unit, with links at least 75 feet wide, unless waived by the Planning Board.
- iii. Common open space shall be functional for wildlife habitat, passive recreation, resource preservation, agriculture, or equestrian uses.
- iv. The location(s) and configuration of the common open space shall be subject to approval by the Planning Board.
- v. Each parcel of common open space shall offer adequate access to residents of the OSFPD.
- vi. Land used for common or shared septic systems may not be counted toward the minimum common open space requirement unless authorized by the Planning Board.
- vii. Not more than 50% of the common open space in an OSFPD shall consist of areas subject to the Wetlands Protection Act, M.G.L. c.131, Section 40, for reasons other than being subject to flooding, or the Conservancy District as defined by Section V.C. of this Bylaw.
- viii. Existing utility easements may not be counted as common open space.
- ix. Up to five percent (5%) of the minimum required open space may be used for gravel roadways, pavement or structures accessory to the dedicated use or uses of the common open space. Principal or accessory structures and access roads essential to an agricultural use are exempt from this requirement, except for indoor/covered riding rings.

b. Ownership of the Common Open Space. Any common open space within an OSFPD shall be conveyed to the Town and accepted for park or open space use, and/or shall be conveyed to a non-profit organization the principal purpose of which is the conservation of open space, and/or shall be conveyed to a corporation or trust owned or to be owned by the owners of lots or residential units within the plan, as provided by M.G.L. c. 40A, Section 9. In any case where the common open space is not conveyed to the Town, a restriction enforceable by the Town or the Conservation Commission shall be recorded providing that such land shall be kept in an open or natural state and not be built for residential use or developed for accessory uses such as parking or roadway.

9. Dimensional Standards. To maintain harmony with surrounding areas, existing dimensional requirements of this Bylaw shall apply to any lot located along the perimeter of an OSFPD or abutting any existing residential development. In addition, any OSFPD lot that relies on an existing public way for frontage shall conform to the applicable frontage and front yard setback requirements. For interior lots in an OSFPD, the Planning Board may waive the requirements for minimum lot area, setbacks, building coverage, frontage, number of dwelling units per lot, shared driveways or irregular lot shape that would normally apply in the zoning district in order to maximize the amount of open space, reduce site disturbance and protect significant farmland or scenic landscapes. The following additional requirements apply within the OSFPD:
 - a. The minimum distance between clusters of any townhouse dwellings shall be fifty feet (50') unless waived by the Planning Board to further the purposes of this Bylaw section.
 - b. At least 50% of the required yard setbacks shall be maintained on interior lots in the OSFPD unless a reduction is authorized by the Planning Board to accommodate "zero lot line" design.
10. OSFPD Special Permit Design Standards. The following General and Site Specific Design Standards shall apply to all OSFPDs and shall govern the development and design process.
 - a. General Design Standards.
 - i. The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal. The grade changes shall be in keeping with the general appearance of the neighboring developed areas. The orientation of individual building sites shall be such as to maintain maximum natural topography and cover. Topography, tree cover, and natural drainage ways shall be treated as fixed determinants of road and lot configuration rather than as malleable elements that can be changed to follow a preferred development scheme.
 - ii. Streets shall be designed and located in such a manner as to maintain and preserve natural topography, significant landmarks and trees; to minimize cut and fill; and to preserve and enhance views and vistas on or off the subject property.
 - iii. Building designs shall relate harmoniously to the terrain and the use, scale, and architecture of existing buildings in the vicinity that have functional or visual relationship to the proposed buildings.
 - iv. All open space shall be designed to add to the visual amenities of the area by maximizing its visibility for persons passing the site or overlooking it from nearby properties.

- v. The removal or disruption of historic, traditional or significant uses, structures, or architectural elements shall be minimized insofar as practicable, whether these exist on the site or any adjacent properties.
- b. Site Specific Design Standards.
 - i. Mix of Housing Types. The OSFPD may consist of a combination of single-family, two-family and other multifamily residential structures. Two-bedroom units are encouraged to be designated as age-restricted (55 years old and over).
 - ii. Parking. Each dwelling unit shall be served by two (2) off-street parking spaces. Parking spaces in front of garages may count in the computation. All parking areas with greater than four spaces shall be screened from view from the road. Residential structures should be oriented toward the street serving the premises and not the required parking area
 - iii. Buffer Areas.
 - (1) A vegetated buffer area of 25' minimum shall be provided at the following locations:
 - i. perimeter of the property where it abuts residentially zoned and occupied properties
 - ii. certain resource areas on or adjacent to the tract such as rock outcrops, ledge, agricultural or recreational fields, and land held for conservation purposes.
 - (2) A landscape plan will be required for buffers to ensure screening from abutting properties. Additions to existing plantings may be required by the Planning Board.
 - (3) The Planning Board may waive the buffer requirement when it determines that a small buffer (or no buffer) will suffice to accomplish the objective set forth herein.
 - (4) Driveways necessary for access and egress to and from the tract may cross such buffer areas.
 - iv. Stormwater Runoff and Drainage. The peak rate of stormwater runoff and drainage design shall comply with Department of Environmental Protection Stormwater Management Policy. All structural surface stormwater management facilities shall be accompanied by a conceptual screening and landscape plan. The Planning Board shall encourage low impact development practices such as the use of "soft" (non-structural) natural stormwater management techniques (such as open swales) and other drainage techniques that do not create impervious surfaces and that enable infiltration where appropriate. Water conservation measures, including but not limited to the use of rainwater retention systems, such as rain barrels and cisterns for water irrigation purposes, are also strongly encouraged.

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- v. Common/Shared Driveway. A common or shared driveway may serve a maximum of three dwelling units unless otherwise approved by the Planning Board, with input from public safety officials.
 - vi. On-site Pedestrian and Bicycle Circulation. Walkways and bicycle paths shall be provided to link residences with parking areas, recreation facilities (including parkland and open space) and adjacent land uses where appropriate.
11. Review Procedures for OSFPD Special Permit.
- a. The applicant shall furnish a copy of the application to the Town Clerk.
 - b. The applicant shall furnish sufficient copies of the special permit application to the Planning Board to distribute for review to the Board of Health, Board of Selectmen, Building Inspector, Conservation Commission and Open Space Committee, Department of Public Works, Fire Chief, Police Chief, Historic District Commission, Office on Disability, and Zoning Board of Appeals.
 - c. Reports from the above-named boards and officials shall be submitted to the Planning Board within thirty (30) days of receipt by the reviewing party. In the event that the public hearing by the Planning Board is held prior to the expiration of the 30-day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that 30-day period. Public hearing procedures shall comply with the requirements of M.G.L. Ch. 40A, Section 9.
 - d. Planning Board members shall conduct a site visit with the applicant prior to or during the public hearing.
 - e. An OSFPD Special Permit may be issued only following a public hearing held within 65 days after filing an application with the Planning Board.
 - f. Once an OSFPD Special Permit application has been submitted, no tree removal, no utility installation, no ditching, grading or construction of roads, no grading of land or lots, no excavation, except for purposes of soil testing, no dredging or filling and no construction of buildings or structures shall be done on any part of the site until the application has been reviewed and decided as provided by these regulations.
12. Decision of the Planning Board for OSFPD Special Permit. The Planning Board shall take one of the following actions within 90 days following the date of the public hearing unless extended by written agreement between the Planning Board and the applicant in accordance with M.G.L. c.40A, Section 9, and Section VIII.C of this Bylaw:
- a. The Planning Board may grant an OSFPD Special Permit with any conditions, safeguards, and limitations, considering each of the following:

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- i. The degree to which the conceptual design and layout of the proposed OSFPD is superior to a conventional development in preserving open space for conservation and recreation, preserving natural features of the land, achieving more efficient provision of streets, utilities and other public services, and providing a high degree of design quality;
 - ii. The degree to which the OSFPD promotes permanent preservation of open space, agricultural land, forestry land, historical and archeological resources, existing and proposed trails, wildlife habitat and corridors, and other natural resources including wetlands and water bodies;
 - iii. The degree to which the OSFPD achieves sustainable design through a more efficient form of development that consumes less open land and conforms to existing topography and natural features better than a conventional subdivision; and
 - iv. The degree to which the OSFPD furthers the goals and policies of the Master Plan; and the purposes of this Bylaw section.
- b. The Planning Board may deny a special permit upon finding that the application does not comply with the provisions of this Bylaw section.
 - c. The Planning Board may determine that the location is best suited for a conventional division of land, and issue a special permit decision authorizing the applicant to submit a conventional subdivision plan (or a plan for a division of land for five or more lots, such as an ANR plan).
 - d. The applicant may elect to submit a conventional subdivision regardless of the findings of the Planning Board.

13. Effect of OSFPD Special Permit Approval.

- a. Approval of an OSFPD Special Permit under this Bylaw section shall not be considered approval of any construction. This approval is a preliminary approval, intended to give guidance to the applicant for the development of an OSFPD Definitive Subdivision Plan or a Cluster Design Plan, and to determine whether the applicant's submittal meets the objectives of this Bylaw section and the Town.
- b. Approval of an OSFPD Special Permit does not indicate approval of the Board of Health, Conservation Commission, or any other entity from which the development requires separate permits or approvals.

14. Duration of OSFPD Special Permit. An OSFPD Special Permit is granted for a period of two years from the date of its approval and shall lapse if substantial use or construction has not commenced by such date, except for good cause shown.

15. Public Benefit Incentives. In approving an OSFPD Special Permit, the Planning Board may authorize an increase in the number of dwelling units beyond the

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Allowed OSFPD Density. Such increase may be approved only for an OSFPD that provides one or both of the following public benefits:

- a. Additional Common Open Space. For each additional ten percent (10%) of the site (over and above the required 50%) set aside as common open space, including preserving and providing public access to existing walking or riding trails or for providing connections to existing trails on abutting parcels, an increase of ten percent (10%) of the Base Maximum Density may be approved; provided, however, that the total number of additional units shall not exceed 25% of the Base Maximum Density (computations shall be rounded to the nearest whole number).
- b. Housing for Older Persons. For every one (1) dwelling unit restricted to occupancy by persons over the age of fifty-five, the Planning Board may approve an increase of one (1) additional dwelling unit; provided, however, that the total number of additional units approved shall not exceed 25% of the Base Maximum Density (computations shall be rounded to the nearest whole number).
- c. Limited Public Access to Common Open Space. An increase of 10% of the Base Maximum Density may be approved by the Planning Board for limited public access to the common open space for passive recreation.

In no event shall the Planning Board approve an increase of more than fifty percent (50%) percent of the Base Maximum Density.

16. Relationship Between the OSFPD Special Permit and OSFPD Definitive Subdivision Plan. An OSFPD that involves a subdivision of land may be submitted to the Planning Board for approval under the Subdivision Control Law following the issuance of an OSFPD Special Permit. Planning Board approval of an OSFPD Special Permit shall neither oblige the Planning Board to approve any related Definitive Plan nor substitute for such approval. The OSFPD Definitive Subdivision Plan shall substantially comply with the OSFPD Concept Plan.
17. Relationship Between the OSFPD Special Permit and Cluster Design Plan Approval. The issuance of an OSFPD Special Permit allows the applicant to submit a Cluster Design Plan to the Planning Board for review and approval. A Cluster Design Plan shall be considered neither a subdivision plan under the Subdivision Control Law nor a site plan subject to the provisions of Section VI.H of this Bylaw. No Cluster Design Plan may be filed unless an OSFPD Special Permit has been approved and has not lapsed.
 - a. Cluster Design Plan Submittal Requirements. The applicant shall submit an application for Cluster Design Plan Approval to the Planning Board, with a copy filed with the Town Clerk. The size, form, number and contents of the Cluster Design Plan Application and plan requirements shall be set forth in the Planning Board's OSFPD Rules and Regulations.
 - i. The Cluster Design Plan shall be designed to conform to the approved OSFPD Special Permit.

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- ii. Cluster Design Plan Application filing fees shall be governed and set by the Planning Board in OSFPD Rules and Regulations, and shall be assessed to the owner and/or the applicant. Separate technical review fees as provided for in state statute may be assessed for engineering, architectural or other review by one or more consultants selected by the Planning Board.
- b. Cluster Design Plan Procedures. Cluster Design Plan Approval may be issued by the Planning Board only following a public hearing held within 35 days after filing an application with the Planning Board.
 - i. The applicant shall furnish sufficient copies of a complete Cluster Design Plan application for the Planning Board to distribute to the Board of Health, Board of Selectmen, Building Inspector, Conservation Commission and Open Space Committee, Department of Public Works, Fire Chief, Police Chief, Historic District Commission, Office on Disability, and Zoning Board of Appeals.
 - ii. Notice of the time, place and subject matter of the public hearing shall be in accordance with the provisions of M.G.L. c.40A, Section 11. Legal notice mailed to abutters shall be sent by the Planning Board by Certified Mail at the Applicant's expense. Reports from other boards and officials shall be submitted to the Planning Board within thirty (30) days of receipt by the reviewing party. In the event that the public hearing by the Planning Board is held prior to the expiration of the 30-day period, the Planning Board shall continue the public hearing to permit the formal submission of reports and recommendations within that 30-day period.
 - iii. The Planning Board shall determine whether the Cluster Design Plan complies with the requirements of Section 12. (Decision of the Planning Board for OSFPD Special Permit) within 65 days of the public hearing. If no action is taken within 65 days, the application shall be deemed approved as submitted.
 - iv. Within 15 days of its vote on the Cluster Design Plan, a copy of the Cluster Design Plan decision shall be filed with the Town Clerk and the Building Inspector, with a copy being sent by Certified Mail or hand delivered to the applicant. Any interested party aggrieved by the Cluster Design Plan decision may file an appeal under the provisions of M.G.L. c.40A Section 17.
 - v. The Building Inspector shall not approve any building permit application subject to these provisions without receipt of Planning Board approval and expiration of the appeal period, as certified by the Town Clerk.
- c. Cluster Design Plan Decision. The Planning Board shall take one of the following actions within 65 days following the date of the public hearing:
 - i. The Planning Board shall approve a Cluster Design Plan only upon a determination that the plan substantially complies with the OSFPD Special Permit and satisfactorily addresses all of the following criteria:

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- (1) Adequate access to each structure for public safety equipment and personnel.
 - (2) Adequate utility service and drainage, consistent where appropriate with the Hamilton Subdivision Regulations in effect at the time of the submission of the Site Plan.
 - (3) Adequate capacity on impacted streets to accommodate the proposed project, based on reports received from the Police Department and the Department of Public Works or technical review consultants retained by the Planning Board.
 - (4) Adequate measures to reduce the volume of cut or fill, soil erosion, and visual intrusion of parking areas viewed from public ways or abutting properties.
 - (5) Protection of pedestrian and vehicular safety within the site and egressing from it.
 - (6) Compliance with conceptual landscape, building design, and placement of buildings.
 - (7) Consistency with the Planning Board's OSFPD Rules and Regulations.
 - (8) Compliance with all the other requirements of this Bylaw.
- ii. A Cluster Design Plan will be considered not to comply substantially with the OSFPD Special Permit Plan if the Planning Board determines that any of the following conditions exist:
- (1) An increase in the number of buildings or dwelling units;
 - (2) A significant decrease in the open space acreage;
 - (3) A significant change in the general development pattern which adversely affects natural landscape features and open space preservation;
 - (4) Significant changes to the storm water management facilities; and/or,
 - (5) Significant changes in the wastewater management systems.
- iii. If the Planning Board determines that the Cluster Design Plan does not substantially comply with the OSFPD Special Permit, the Board may disapprove the Cluster Design Plan.
- iv. The Planning Board may conditionally approve a Cluster Design Plan that does not substantially comply with the OSFPD Special Permit. However, such conditional approval must identify where the plan does not substantially comply with the special permit for the Concept Plan and shall require that the Special Permit be amended to be in compliance with the significant changes identified by the Planning Board.

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- (1) The Planning Board shall also require that the applicant file an application to amend the OSFPD Special Permit within a specified time period.
- (2) The public hearing on the application to amend the OSFPD Special Permit shall be limited to the significant changes identified by the Planning Board in their conditional approval of the Cluster Design Plan. These are the only considerations that the Planning Board may take into account in deciding whether to amend the OSFPD Special Permit for the Concept Plan.

18. Severability. If any portion of this Bylaw section is declared to be invalid, the remainder shall continue to be in full force and effect.

B. **Business District** is intended for retail and local neighborhood shopping, for offices, and for other business uses.

Permitted Uses:

1. All residence, agricultural and other uses permitted in the R-1a and R-1b districts subject to the same restrictions (Ed. Note: including Special Permit requirements) as prescribed for such uses in said Districts.
2. Retail store or service establishment. This use requires Site Plan Review; see section VI.H.
3. Business or professional office, or bank. These uses require Site Plan Review; see section VI.H.
4. Restaurant or other place for serving food. This use requires Site Plan Review; see section VI.H.
5. Municipal, State or Federal governmental buildings. This use requires Site Plan Review; see section VI.H.
6. Nonprofit civic and fraternal building. This use requires Site Plan Review; see section VI.H.
7. Use of land for a public utility.
8. Parking area or garage for use of employees, customers or visitors under the conditions specified in Paragraphs D and H of Section VI for approval of site plan, etc. This use requires Site Plan Review; see section VI.H.
9. Signs or display advertising goods or services available on the lot as provided in Paragraph E of Section VI.
10. Accessory buildings and uses customarily incidental to permitted uses. These uses may require Site Plan Review; see section VI.H.

11. Subject to Special Permit by the Board of Appeals as provided for in Section IX.D below, the following:

- a. Gasoline Service Station provided that repairs shall be limited to minor changes and adjustments and that gasoline pumps and equipment shall be so located that vehicles to be serviced are entirely upon the service station lot. This use requires Site Plan Review; see section VI.H.
- b. Rail or Bus Station or terminal. This use requires Site Plan Review; see section VI.H.
- c. Funeral homes. This use requires Site Plan Review; see section VI.H.
- d. Manufacture of products sold on the premises at retail, where no more than five operators are employed in such manufacture, and provided that before any building permit may be granted, the Board of Appeals shall determine that such activities will not be offensive, injurious, or noxious because of sewerage, refuse, noise, vibration, smoke, fumes, dust, odors, danger of fire or explosion or other characteristics detrimental to a dominantly residential town or which may tend to reduce property values in the same or adjoining districts, in accordance with the standards set forth in Paragraph F of Section VI below. This use requires Site Plan Review; see section VI.H.
- e. Repair shop for automobiles, appliances and other light equipment. This use requires Site Plan Review; see section VI.H.
- f. Automobile salesroom. This use requires Site Plan Review; see section VI.H.
- g. Uses, whether or not on the same parcel as activities permitted as a matter of right, accessory to activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production, provided the Board of Appeals finds that the proposed use does not substantially derogate from the public good. These uses may require Site Plan Review; see section VI.H.
- h. Wind Energy Conversion Systems, subject to the standards set forth in Section VI.I.
- i. Adult Entertainment Uses. (Added May 1997) This use requires Site Plan Review and is subject to the following standards:

Purpose and Intent:

It has been documented in numerous towns and cities throughout the Commonwealth of Massachusetts and elsewhere in the United States

that adult entertainment uses are distinguishable from other business uses and that adult entertainment uses degrade the quality of life in the areas of a community where they are located. Studies have shown secondary impacts such as increased levels of crime and blight resulting from the clustering and concentration of adult entertainment uses. Late night noise and traffic also increase due to the late hours of operation of many of these establishments. This subsection is adopted pursuant to GL Ch. 40A, Sec. 9A with the purpose and intent of regulating and limiting the location of Adult Entertainment Establishments (as defined herein) so as to prevent the secondary effects associated with these establishments and to protect the health, safety, and general welfare of the present and future inhabitants of the Town of Hamilton.

The provisions of this subsection have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the intent or effect of this subsection to restrict or deny access by adults to sexually oriented matter or materials protected by the Constitution of the United States or of the Commonwealth of Massachusetts, nor restrict nor deny rights that distributors or exhibitors of such matter or materials may have to sell, distribute, or exhibit such matter or materials. Neither is it the intent or effect of this subsection to legalize the distribution of obscene matter or materials.

1. No adult entertainment use as defined in Section VII shall be established or operated in the Town unless a special permit has been granted by the Zoning Board of Appeals.
2. Standards for granting Special Permit: No special permit may be granted hereunder for an adult entertainment use unless each of the following standards are fully satisfied:
 - a. No such use shall be located within the following designated areas:
 1. Two hundred feet (200') from the nearest boundary of any residential zoning district or from the nearest property line of any residential use;
 2. Five hundred feet (500') from the nearest property line of any public or private school;
 3. Two hundred feet (200') from the nearest property line of any church or other religious facility;
 4. Five hundred feet (500') from the nearest property line of any public park or recreation area and any principal or accessory private recreational facility use, or area where youths commonly gather;

5. Five hundred feet (500') from the nearest property line of any group day care center, family day care center, library, nursing home and hospital;
6. One thousand feet (1000') from the nearest property line of any other adult entertainment establishment.
7. Two hundred feet (200') from the nearest property line of any retail, restaurant, or cabaret use whose principal business falls under GL Ch. 138 Sec. 12.

All distances specified above shall be measured by a straight line from the nearest property line of the premises on which the adult entertainment establishment is to be located to the nearest boundary line of a residential zoning district, or to the nearest property line of any residential use, public or private school, church or other religious facility, public park, or recreational area, group day care center, family day care center, library, nursing home, hospital or retail, restaurant, or cabaret use whose principal business falls under GL Ch. 138 Sec. 12, or any other adult entertainment use as the case may be.

- b. An adult entertainment use may not be allowed within a building containing other retail, consumer or residential uses, or within a shopping center, shopping plaza, or mall.
- c. The adult entertainment use shall comply with all off-street parking requirements contained in Section VI.D.
- d. No adult entertainment use may have a freestanding accessory sign, nor a sign in excess of a height of 15 feet. Further no sign shall rotate, be illuminated or contain reflective or fluorescent elements which will sparkle in sunlight. Signs will comply with all requirements contained in Section VI.E.
- e. No adult entertainment use may have any flashing lights visible from outside the establishment.
- f. No pictures, publications, videotapes, movies, covers or other advertising items shall be displayed in the windows of or on the building of any adult bookstore, adult cabaret, adult motion picture theater, adult paraphernalia store or adult video store.
- g. All building openings, entries, and windows for any adult entertainment use shall be located, covered, or screened in such a manner as to prevent a view into the interior of an adult entertainment use building from any area open to the general public.
- h. The building in which the adult entertainment will be located shall be designed so that noise from any proposed entertainment is not audible (0 decibels) outside.
 - a. A site plan shall be submitted by the applicant in order that the special permit granting authority may determine that the above standards have been met. The site plan shall meet all the requirements of the Site Plan Section of this bylaw, Section VI.H. with the following

additions: show the distances between the proposed adult entertainment establishment and any residential zoning district, public or private school, church, or other religious facility, public park or recreation area, group day care center, family day care center, library, nursing home, and hospital, retail, restaurant, or cabaret use whose principal business falls under GL Ch.138 Sec. 12, and any other adult entertainment establishment.

- b. Communication Towers and Telecommunication Antenna Facilities subject to standards set forth in section VI.J
-
3. Imposition of Other Conditions: The special permit granting authority may impose in addition to any applicable conditions specified herein, such additional conditions as it finds reasonably appropriate to safeguard the neighborhood or otherwise serve the purposes of this By-Law, including but not limited to the following: front, side, or rear yards greater than the minimum required by this ordinance, screening buffers or planting strips, fences or walls; limitations upon the size, method and time of operations; time duration of the permit, regulations of number and location of driveways or other traffic features; and off-street parking. Furthermore, all standards and conditions for Business Development of Section VI.F. of this zoning bylaw shall be applicable to the granting of a special permit under this section.
 4. Lapse of Permit: Any special permit granted hereunder for an adult entertainment use shall lapse after one year, including such time required to pursue or await the determination of an appeal from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause, or in the case of a permit for construction, if construction has not begun by such date except for good cause.
 5. No special permit may be granted hereunder to any person convicted of violating the provisions of GL Ch.119 sec. 63 or GL Ch. 272 sec. 28.

C. Conservancy District

Conservancy District is intended for the preservation and maintenance of groundwater quality and quantity, for the protection of watershed resources upon which the inhabitants depend for water supply, and for the enhancement of water quality by encouraging infiltration and percolation through natural soils; to protect the public health and safety, persons and property against hazards of flood water inundation; for the protection of the community against the costs which may be incurred when unsuitable development occurs in swamps, marshes, along watercourses, or in areas subject to floods; to preserve and increase the amenities of

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the Town; and to conserve natural conditions, wild life, and open spaces for the education, recreation and general welfare of the public.

Permitted Uses: (Ed. Note: Construction or alteration in Conservancy District will usually also require application to the Hamilton Conservation Commission under the Wetlands Protection Act and the Hamilton Wetlands By-law.)

1. Conservation of water, plants, wild life and ponds;
2. Passive recreation activities which do not require paving, filling, or construction of facilities that may degrade water quality, including but not limited to nature study, walking, pond skating, canoeing, fishing, horseback riding, and hunting where otherwise legally permitted;
3. Agricultural uses, forestry, horticulture and floriculture including grazing of animals and harvesting of crops, provided that use of chemical fertilizers, pesticides or defoliants found by the Board of Health or the Conservation Commission to be inconsistent with the purposes of this Conservancy District may be regulated by said Boards. (Ed. Note: See also Bd. of Health Animal Regs.)
4. Religious and educational uses on land owned or leased by the Commonwealth, or its agencies, subdivisions or bodies politic, or by a religious sect or denomination, or by a non-profit educational corporation. (Ed. Note: Site Plan Review may be required; see Sec. VI.H.).
5. Subject to Special Permit by the Board of Appeals under specified conditions as provided for in Section IX.D below, and only when the Conservation Commission has reported to the Board of Appeals that such activities will not have adverse effects relating to water quality or recharge, upstream or downstream flooding and drainage, and water storage capacity in the Conservancy District.
 - a. Non-residential buildings and structures, such as:
 1. Boat-houses, duck-walks and landings;
 2. Stands for sale of produce raised on the premises; Provided that any such building or structure permitted by the Board of Appeals shall be designed, placed and constructed to offer minimum obstruction to the flow of water and shall be firmly anchored to prevent floating away and thus threatening other buildings or blocking of openings in restricted sections of the watercourse below (Ed. Note: Special Permit and Site Plan review required per Sec. V.A.11.f. and VI.H.)
 - b. Dams, changes in watercourses, or drainage works, only as part of an over-all drainage basin plan.

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- c. Uses, whether or not on the same parcel as activities permitted as a matter of right, which activities are necessary in connection with scientific research or scientific development or related production provided the Board of Appeals finds that the proposed use does not substantially derogate from the public good, and that the proposed use does not include impermeable ground cover in excess of 10% of the total lot area, or any storage of chemical substances which have the potential for degrading groundwater quality. (Site Plan Review under Section VI.H. may be required.)
- d. Wind Energy Conversion Systems, subject to the standards set forth in Section VI.I.

Except as provided above, the following are prohibited in the Conservancy District:

- 1. Land filling and dumping of any natural or other materials;
- 2. Buildings or structures;
- 3. Paving and other impermeable surfaces;
- 4. Roads and driveways;
- 5. Permanent storage of materials or equipment;
- 6. Storage of chemical substances which may degrade water quality;
- 7. Commercial burrow operations;
- 8. Dams, drainage systems and changes in watercourses which may speed drainage through or around a natural watershed, thereby reducing opportunities for water quality renovation by percolation or infiltration through soils;
- 9. Alteration of terrain which may result in increased discharge of stormwater runoff into the District.

If any land shown on the Zoning Map as being in the Conservancy District is proven to the satisfaction of the Board of Appeals, after reference of the proof to and report by the Conservation Commission, Planning Board and Board of Health, as being in fact not subject to flooding or not unsuitable because of drainage conditions for residential use, and that neither construction activities nor the use of such land for residence will interfere with the general purposes for which Conservancy Districts have been established, and will not be detrimental to the public health, safety or welfare, the Board of Appeals may, by grant of a special permit, permit the use of such land for single family residence under all the provisions of this By-law applying to the Residence District in which said land lies.

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If for any reason the restrictions or requirements contained in this Section C shall be or become invalid as to any land shown on the Zoning Map as being in the Conservancy District then such land shall thereafter be subject to the regulation for the district in which the land lies.

D. Groundwater Protection Overlay District (Revised May, 2000)

1. Purpose:

The purposes of the Groundwater Protection Overlay District are:

- a. To promote the health, safety and general welfare of the Town by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and business of Hamilton.
- b. To preserve and protect existing and potential sources of drinking water supplies and recharge areas;
- c. To conserve the natural resources of the Town; and
- d. To prevent temporary and permanent contamination of the environment.

2. Scope of Authority

The Groundwater Protection District is an overlay district and shall be superimposed on the zoning districts established by this by-law. This overlay district shall apply to all new construction, reconstruction or expansion of existing buildings, and new or expanded uses. Applicable activities or uses which fall within the Well Head Protection District must additionally comply with the requirements of this district. Uses that are prohibited in the underlying districts shall not be permitted in the Groundwater Protection District.

3. Location

The Groundwater Protection Overlay District shall consist of those areas shown on the Hamilton Groundwater Protection Overlay District Map, dated May 1985, amended May 2000 to include the aquifer protection districts of neighboring communities, that lie within the Town of Hamilton. Said map is hereby incorporated into the Zoning By-law by reference, and shall be on file with the Town Clerk. (Ed. Note: Every Zoning By-law book sold after 1985 includes a Groundwater Protection District map and a regular Zoning District map. Zoning By-law books sold after May 2000 reflect the additional areas of protection.)

4. Dimensional Requirements

- a. Regardless of the minimum lot size of the underlying zone, there shall be a minimum lot area of 80,000 square feet for a building lot in the Groundwater Protection Overlay District (Amended May 7, 1990).
- b. See section VI.B.1.c. for Computation of Lot Area.

5. Lot Partially in the District.

- a. Any lot, which has one-third or more of its total area falling in the Groundwater Protection District, must meet all the requirements of the Groundwater Protection District, section V.D. (Added May 7, 1990).

- b. If the location of the District boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a Special Permit application to the Special Permit Granting Authority (SPGA). Any application for a special permit for this purpose shall be accompanied by adequate documentation. The burden of proof shall be upon the owner(s) of the land to show where the bounds should be located. At the request of the owner(s), the Town may engage a professional engineer, hydrologist, geologist, or soil scientist to determine more accurately the boundaries of the District with respect to individual parcels of land, and may charge the owner(s) for the cost of the investigation.

6. Use Regulations

a. Permitted Uses

Unless prohibited or restricted by the regulations of the Groundwater Protection District or other state or local regulations, uses or activities permitted in the underlying district are controlled by the requirements of the underlying district.

b. Prohibited Uses

The following uses are prohibited within the Groundwater Protection District:

- i. Landfills and open dumps as defined in 310 CMR 19.006.
- ii. Automobile graveyards and junkyards, as defined in MGL c. 140B,1.
- iii. Landfills receiving only wastewater and/or septage residuals including those approved by the Department pursuant to MGL c.21 26 through 53; MGL c 83, 6 and 7, and regulations promulgated thereunder;
- iv. Facilities that generate, treat, store or dispose of hazardous waste subject to MGL c. 21C and 310 CMR 30.00, except the following:
 - a. very small quantity generators as defined under 310 CMR 30.00;
 - b. household hazardous waste collection centers or events operated pursuant to 310 CMR 30.390;
 - c. waste oil retention facilities required by MGL c. 21, 52A;
 - d. water remediation treatment works approved by the Mass. DEP for the treatment of contaminated ground or surface waters;
- v. Storage of liquid hazardous materials, as defined in MGL c. 21E and liquid petroleum products, including petroleum, fuel oil, heating oil bulk stations and terminals (pursuant to 310 CMR 22.21(2)(a)(5), (Amended October, 2000) unless such storage is:
 - a. Used for storing heating oil for consumptive use on the premises where stored and;
 - b. Farm or residential tanks of 1100 gal. Capacity or less, used for storing motor oil/fuel for non-commercial purposes and;
 - c. The new fuel oil tank shall be installed either within the building, which it will heat, or above ground outside the building. Surfaces underlying each tank shall be impermeable to fuel oil and shall be enclosed by a permanent berm or dike of impermeable

- construction capable of containing 10% of the total volume of the tank or tanks. The containment shall be designed and operated to hold either 10% of the total possible storage capacity of all containers or 110% of the largest container's storage capacity whichever is greater and;
- d. Any supply or return lines carrying fuel oil underground or under the basement floor surface shall be enclosed in conduit piping impervious to fuel oil to prevent leakage into the soil and in compliance with 527 CMR 4.0 et. seq. and any other applicable state regulations;
 - e. All leaking tanks must be repaired or emptied within 24 hours of leak detection. All State regulations pertaining to fuel tanks are also applicable to tanks governed by this Zoning Regulation.
- vi. Storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;
 - vii. Storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
 - viii. Storage of animal manure, unless covered or contained in accordance with the specifications of the United States Natural Resources Conservation Services.
 - ix. Earth removal consisting of the removal of soil, loam, sand, gravel or any other earth material (including mining activities) to within four (4) feet of the historical high ground water table as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, or utility works.
 - x. Non-sanitary treatment or disposal works subject to 314 CMR 5.00, except for the following:
 - a. the replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;
 - b. treatment works approved by the Department designed for the treatment of contaminated ground or surface water and operating in compliance with 314 CMR 5.05(3) or 5.05(13);
 - c. publicly owned treatment works;
 - xi. Stockpiling and disposal of snow and ice containing deicing chemicals if brought in from outside the district;
 - xii. Storage of commercial fertilizers as defined in MGL c. 128,64, unless such storage is within a structure designed to prevent the generation and escape of contaminated runoff or leachate.
- c. Uses and Activities requiring a Special Permit

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The following uses and activities are permitted only upon the issuance of Special Permit by the Special Permit Granting Authority (SPGA) under such conditions as it may require:

1. Enlargement or alteration of existing uses that do not conform to the Groundwater Protection District
2. Those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, permitted in the underlying district (except as prohibited under Section B). Such activities shall require a special permit to prevent contamination of ground water
3. Any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater. A system for groundwater recharge must be provided which does not degrade groundwater quality. For non-residential uses, recharge shall be by storm water infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all non-residential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner.

7. Procedures for Issuance of Special Permits

- a. The Special Permit Granting Authority (SPGA) under this by-law shall be the Zoning Board of Appeals (the Board). A special permit shall be granted if the Board determines, in conjunction with the Board of Health, the Conservation Commission, the Planning Board and the DPW Superintendent that the intent of the by-law, as well as its specific criteria are met. The Board shall not grant a special permit under this section unless the petitioner's application materials include, in the Board's opinion, sufficiently detailed, definite and credible information to support positive finds in relations to the standards given in this section. The Board shall document the basis for any departures from the recommendations of the other town boards or agencies in its decision.
- b. Upon receipt of the special permit application, the Board shall transmit one copy to the Board of Health, Conservation Commission, Planning Board and D.P.W. Superintendent for their recommendations. Failure to respond in writing within thirty-five (35) days shall indicate approval or no desire to comment by said Board of official. The necessary copies of the application shall be furnished by the applicant.
- c. The Board may grant the required special permit only upon finding that the proposed use meets the following standards, those specified in Section 6 of this By-law, and any

regulations or guidelines adopted by the Board. The proposed use must:

1. In no way, during construction or thereafter, adversely affect the existing or potential quality of quantity of water that is available in the Water Protection District;
 2. Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.
- d. The Planning Board may adopt regulations to govern design features of projects. Such regulations shall be consistent with subdivision regulations adopted by the Planning Board.
- e. The applicant shall file eight copies of a site plan and attachments. The site plan shall meet the requirements for site plan review and approval established by Section H of this Zoning By-law. Additional submittals shall include the following information where pertinent;
1. A complete list of chemicals, pesticides, herbicides, fertilizers, fuels and other potentially hazardous material to be used or store on the premises in quantities greater than those associated with normal household use.
 2. For those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Hazardous Materials Coordinator, Fire Chief and Board of Health. The plan shall include:
 - a. provisions to protect against the discharge of hazardous material or wastes to the environment due to spillage, accidental damage, corrosion, leakage or vandalism, including spill containment and clean-up procedures;
 - b. provision for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;
 - c. evidence of compliance with the Regulations of the Mass Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification number from Mass DEP

Proposed down-gradient location(s) for ground water monitoring well(s), should the Board deem the activity a potential ground water threat.

- d. The Board shall hold a hearing, in conformity with the provision of M.G.L. c.40A, 9, within sixty-five (65) days after the filing of the application and after the review by the town boards, departments and commissions.

Notice of the public hearing shall be given by publication and posting and by first-class mailings to "parties interest" as defined by M.G.L. c.40A, 11. The decision of the Board and any extension, modification, or renewal

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thereof shall be filed with the Board and Town Clerk within ninety (90) days following the closing of the public hearing. Failure of the board to act within ninety (90) days shall be deemed as a granting of the permit. However, no work shall commence until a certification is recorded as required.

8. Enforcement

Written notice of any violations of this section shall be given by the Building Inspector to the responsible person as soon as possible after detection of a violation or continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the nature of the violation and may also identify the actions necessary to remove or remedy the violation, measures required for avoiding future violations and schedule of compliance. A copy of such notice shall be submitted to the Board, Board of health, Conservation Commission, Planning Board and D.P.W. Superintendent and water Department. The cost of containment, clean-up or other action for compliance shall be borne by the owner and operator of the premises.

9. Severability

If for any reason the restrictions or requirements contained in this Section V.D. shall be or become invalid as to any land shown to be included in the Groundwater Protection District, then such land shall continue to be subject to the requirements for the underlying district. A determination that any portion or provision of this overlay district is invalid shall not invalidate any special permit previously issued thereunder

E. Elder Housing Special District (Added May 12, 1986)

The purpose of this section is to promote the development of housing designed to serve the housing needs of the present and past elder citizens of Hamilton and Wenham, and the housing needs of the elder members of the immediate families of those Towns' present citizens. This shall be done in a planned and organized manner which will result in such housing being in harmony with the land and the Town and in furtherance of the intent of this Zoning Bylaw. Consistent with this intent, the Planning Board may grant a Special Permit authorizing the development of residentially-zoned land which shall be excepted from frontage, yard, and area requirements as specified in Sec. VI, and shall also be excepted from requirements in Sec.VI.D.1 (parking) and Sec.VI.B.6. (street buffers), but shall meet and be subject to all other zoning standards and to the conditions and standards contained herein. Said Special Permit shall be granted subject to subsequent creation by vote of Town Meeting of an Elder Housing Special District at the site of the proposed project. See Sec. II.A. of this Bylaw and M.G.L., Ch. 40 A. Sec. 5.

1. Standards

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No Special Permit shall be granted under this Section unless the following standards are met:

- a. The Planning Board shall find that the proposed plan of development is in harmony with the purpose and intent of this bylaw and that it will promote the purpose of this Section.
- b. The area of the tract of land to be developed shall contain not less than five (5) acres, exclusive of the area of land lying in the Conservancy District and the area in wetlands subject to M.G.L., Ch. 131, Sec. 40, as mapped by the applicant's consultant and approved by the Hamilton Conservation Commission.
- c. The housing shall be owned and/or controlled by a non-profit organization, or by the Town, or by the Hamilton Housing Authority, or jointly by two or more of such organizations so far as permitted by law.
- d. For purposes of the above subsection c, a "non-profit organization" shall mean a corporation, foundation, or other organization no part of the net earnings of which inures to the benefit of any private shareholder or individual and which has been organized pursuant to M.G.L., Ch. 180, as amended.
- e. The number of dwelling units shall be not more than seven per developable acre as computed in item b. above, provided however that the Planning Board may limit density to as few as one dwelling unit per developable acre.
- f. The site shall have at least one hundred (100) feet of frontage on an existing public or private way. The access road and sidewalks shall be located at least twenty (20) feet from any abutting property line and shall be buffered by landscaping that provides year-round screening of the road from the view of the abutters.
- g. The proposed plan shall provide that there shall be on the site or land associated therewith off-street parking containing at least five (5) parking spaces for each three (3) dwelling units contained in the residence buildings proposed to be built on the site.
- h. Driveways within each site, including those for ingress or egress, shall be thirty (30) feet in width, with twenty (20) feet paved for the use of vehicles and with two (2) sidewalks, each five (5) feet in width. Adequate lighting shall be provided for driveways, and both driveways and parking areas shall be suitably graded and provided and maintained with a permanent dust-free surface, adequate drainage and bumper guards where deemed necessary for safety. Off-street parking shall not be permitted between buildings and side lot lines.
- i. Not more than 25% of the proposed Elder Housing parcel shall be covered with impervious surfaces (buildings, paving).

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- j. Each lot shall be of a size and shape as shall provide a building site which shall be in harmony with the natural terrain and other features of the site by preserving scenic natural vistas and/or the existing rural or other character of the neighborhood.
- k. Each dwelling unit shall be supplied with an adequate water supply system approved by the Board of Health and the Water department.
- l. Each dwelling unit must be served by an adequate sewage treatment facility or on-site sewage disposal system approved by the Board of Health.
- m. Each site shall be in compliance with applicable Town and State wetlands regulations.
- n. No lot on a plan for which a Special Permit is granted under this section may be subdivided so as to create additional lots and notation to that effect shall be shown on the plan.
- o. Dwelling constructed by Special Permit under this section shall not be eligible for subsequent conversion to apartments under Sections V.11.a or V.11.e.
- p. Buildings shall be designed to be consistent with the single family appearance of the Town and shall be complementary in exterior design with each other and, where applicable, with the existing neighborhood in which the development is located.
- q. Sufficient security must be provided to insure completion of the development and continuing compliance upon its completion with the provisions of the Special Permit.
- r. Utilities shall be installed underground.
- s. Signs in Elder Housing Districts shall conform with Sec. VI.E (signs) of this bylaw.

2. Special Permit Application

- a. Eligibility. Any person may submit to the Planning Board for approval a plan of land containing five (5) or more acres, exclusive of land within the Conservancy District and wetlands subject to M.G.L., Ch.131, Sec.40, in accordance with provisions of this section, which Plan shall be accompanied by an application of the Planning Board for a Special Permit consistent with all of the above requirements.
- b. Contents of the Application. Each application shall be prepared in accordance with the requirements for definitive plans as defined in the Hamilton Subdivision Regulations, and shall include at least the following:
 - 1. Description of

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- a. The location of the proposed development and its pertinent topography, soils, wetlands, slopes, and drainage features.
- b. The size of the site in acres and the relevant characteristics of the neighborhood in which it lies.
- c. The number of proposed building lots and the size of each in square feet.
- d. The acreage, location, access, proposed use, and disposition or manner of ownership of the proposed permanent open space.
- e. Provisions for privacy and security, if any.
- f. Proposed traffic circulation patterns and provisions for the safety and convenience of vehicular and pedestrian activity.
- g. Proposed methods for disposal of refuse and other wastes.
- h. Proposed landscaping, exterior lighting, architectural exterior design and elevations, typical floor plans.
- i. Projected phasing, timing of construction, type of ownership and proposed covenants and/or agreements binding on members of the homeowners association.
- j. Projected advantages to the town of the proposed development compared to alternative permitted uses at the same site.

1. Site Plans for the entire site showing:

- a. A plan of the site based on exemption from the aforesaid dimensional requirements but meeting the conditions of Sections V and VI, and showing the number of building lots, the size, and location of each lot, and the boundaries of the front, side and rear yards on each lot; the location and size of the area lot or lots to remain as permanent open space together with any existing or proposed accessory structures; the location, size and type of streets, sidewalks, and parking areas; and the location of any lot or lots and proposed or existing appurtenant structures to be held in common ownership by the lot owner or owners.

c. Procedure

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The original and seven (7) copies of the application shall be filed with the Planning Board and with the Town Clerk. The Planning Board, acting as Special Permit Granting Authority under this section, shall give notice, conduct a public hearing and render a decision in conformity with M.G.L., Ch. 40A, Section 9, and with the Planning Board Subdivision Regulations.

3. Permit Issuance

- a. The Planning Board shall grant a Special Permit if it determines that:
 1. The plan promotes the more efficient use of land in harmony with its natural features, water courses, scenic areas, natural vistas, existing rural character, and similar community assets within the general intent of the Zoning Bylaw and the long range plan of the Town than does conventional single family development;
 2. The building lots comply with the requirements of paragraphs E.1 and E.2 above, regarding permissible number, size, shape, and location of lots.
 3. The plan protects adjoining premises against serious detrimental uses by provisions for surface water drainage, sound and sight barriers and preservation of views, light and air.
 4. The plan provides for convenience and safety of vehicular and pedestrian movement within the site, and for appropriate location of driveway openings in relation to traffic or to adjacent streets.
 5. The plan provides for adequate methods of disposal of refuse and other wastes.
 6. The plan provides for suitable architectural design and a favorable relationship of structures and open space to the natural landscape, existing buildings and other community assets within the area.
 7. The plan complies with all applicable state and local laws and has been approved by the Hamilton Board of Public Works, and Hamilton Police and Fire Departments.
- b. Planning Board approval of a special permit hereunder shall not substitute for compliance with the Subdivision Regulations, nor oblige the Planning Board to approve any related subdivision plan, nor reduce any time periods for Board consideration under the law. However, in order to facilitate processing, the Planning Board shall, insofar as practical under existing law, adopt regulations establishing procedures for submission of a combined plan and application which would satisfy this section and the requirements of the Subdivision Regulations.

- c. Planning Board approval of a Special Permit hereunder shall not authorize construction until a vote of Town Meeting creates an Elder Housing Special District on the site of the project, per Sec. II.A of this Bylaw.

F. Flood Plain District (Added May, 1993)

1. Purpose. The purposes of the Flood Plain District are to 1) ensure public safety through reducing the threats to life and personal injury; 2) eliminate new hazards to emergency response officials; 3) prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding; 4) avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding; 5) eliminate costs associated with the response and cleanup of flooding conditions; 6) reduce damage to public and private property resulting from flooding waters.

2. Floodplain District Boundaries and Base Flood Elevation Data.

- a. The Flood Plain District is herein established as an overlay district. The Flood Plain District includes all special flood hazard areas designated on the Hamilton Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the NFIP dated June 4, 1990 as Zone A, and AE, which indicate the 100-year regulatory floodplain. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Flood insurance study booklet dated June 4, 1990. The FIRM and Flood Insurance Study Booklet are incorporated herein by reference and are on file with the Town Clerk, Selectmen, Planning Board and Conservation Commission.

- b. Base Flood Elevation and Floodway Data.

- i. Floodway Data. In Zone A and AE, along watercourses that have not had a regulatory floodway designated, the best Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
 - ii. Base Flood Elevation Data. Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.
3. Notification of Watercourse Alteration. Any person who proposes to alter any floodway in the Town of Hamilton must deliver a copy of all permits and variances received under the regulations listed in this section, V.F. to all cities and towns adjacent to Hamilton, to the National Flood Insurance Program State Coordinator in the MA Division of Water Resources, and to the National Flood Insurance Program Specialist in the Federal Emergency Management Agency. (Satisfactory evidence shall consist of

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certified mail receipts or signed and dated receipts for hand-delivery of all deliveries required by this sub-section.)

4. Use Regulations. The Floodplain District is established as an overlay district to all other districts. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Law and with the following:

- a. Section of the Massachusetts State Building Code which addresses floodplain areas (currently 780 CMR 2102.0, "Flood Resistant Construction");
- b. Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- c. Inland Wetlands Restriction DEP (currently 302 CMR 6.00);
- d. Minimum Requirements for the Subsurface Disposal of Sanitary Sewage DEP (currently 310 CMR 15, Title 5) and the Hamilton Board of Health Regulations Chapter 6 (Satisfactory evidence shall consist of any Permit issued by the Board of Health for the project and/or a written statement from the Board of Health or its Agent that no such Permit is necessary for the project.)

Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations,

5. Other Regulations.

- a. Review all subdivision proposals to assure that: 1) such proposals minimize flood damage; 2) all public utilities and facilities are located and constructed to minimize or eliminate flood damage; and 3) adequate drainage is provided to reduce exposure to flood hazards.
- b. Existing contour intervals of site and elevations of existing structures must be included on plan proposal.

6. Permitted Uses. The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment:

- a. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.,
- b. Forestry and nursery uses.
- c. Outdoor recreational uses, including fishing, boating, play areas, etc.
- d. Conservation of water, plants, wildlife.

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- e. Wildlife management areas, foot, bicycle, and/or horse paths.
- f. Temporary nonresidential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised on the premises.
- g. Buildings lawfully existing prior to the adoption of these provisions.

SECTION VI. DEVELOPMENT REGULATION

(See also Sec. I, "Purposes", Items A and B)

A. Height Regulations:

1. The height of any structure shall not exceed thirty-five (35) feet or not in excess of three stories.
2. Building height shall be measured as the vertical distance from the average elevation of the finished lot grade at the front of the building to the highest point of the top story in the case of a flat roof, and to the mean height between the plate and the ridge in the case of a pitched roof.
3. Each story shall be deemed to be the portion of a building being between the upper surface of any floor and the upper surface of the floor next above, having more than one-half of its height above the average elevation of the finished grade adjoining the building, provided that any part of a building between the topmost floor and the roof shall be deemed a half-story.
4. Limitation of height shall not apply to such structures as churches, belfries, flagpoles, chimneys, radio and television antennae, windmills, silos, water tanks and similar non-habitable structures. See Section VI.I for height regulations for windmills.

B. Lot Dimensional Regulations

1. Lot Area

- a. For each dwelling unit there shall be a lot area:
 1. in the R-1a Residence District of not less than twenty thousand (20,000) square feet except as provided under Special Permits by the Board of Appeals, under the provisions of Section V.A.11.e. above;
 2. in the R-1b Residence District of not less than forty thousand (40,000) square feet.
 3. in the B Business District of not less than twenty thousand (20,000) square feet except as provided under Special Permits by the Board of Appeals.
 4. in the R-A Residence-Agricultural District of not less than eighty thousand (80,000) square feet.

5. in the GP Groundwater Protection Overlay District, of the size set forth in Section V.D. above.

b. The minimum lot area for business uses within the Business Districts shall be in accordance with an approved site plan submitted pursuant to Section VI.H below.

c. Computation of Lot Area (Amended 1981, 1983, 1994, 1999)

1. No lot shall be laid out which is irregular in shape, (except for those larger lots with frontage exceptions):

a. The minimum lot width shall be such that a circle can be drawn on the plan between side lot lines and tangential to the frontage of a given lot. The required circle shall be entirely contained within the lot's perimeter. The required circle shall have a diameter of 90% of the required frontage or 112.5' in the R1A districts to correspond to the required frontage of 125'; and 157.5' in the R1B and RA districts to correspond to the required frontage of 175'.

Please refer to section VI-B 5 minimum Width and Depth of Lot

2. In computing the area of any lot, no part of a public or private way and no part of a pond or river shall be included.

3. Every lot laid out for residential use shall have a contiguous parcel of land for building which:

a. is not in the Conservancy District, as shown on the Conservancy District Map incorporated into the Hamilton Zoning By-law, as amended;

b. is not an area designated as having severe limitations for septic systems or house sites on the Hamilton Soil Survey Maps, U.S. Soil Conservation Service; and

c. is not a wetland as defined in General Laws, Ch. 131, Section 40.

4. The contiguous parcel of land for building referred to in the preceding paragraph shall meet the following minimums, provided that the Groundwater Protection Overlay District minimum shall override the minimum for the underlying zone.

10,000 square feet in the R-1a District

20,000 square feet in the R-1b District

40,000 square feet in the R-A District

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40,000 square feet in the Groundwater Protection Overlay District for lots which are not lots qualifying under Section VI.B.4 (reduced frontage lots);

One-half the sum of (the minimum lot size plus three acres) for lots qualifying under Section VI.B.4 (reduced frontage lots); and 105,340 square feet in the Groundwater Protection Overlay District for lots qualifying under Section VI.B.4 (reduced frontage lots).

5. If evidence certified by a Registered Professional Engineer, such as test pits, borings, vegetative analysis and other methods acceptable to the Building Inspector is presented by the applicant to show that the proposed building area does not, in fact, include the characteristics prohibited above, and that the boundaries on a map used to enforce this section are in error as to the parcel, the Building Inspector may accept this alternative evidence as the basis for the determination of compliance with this section.

6. The proposed house site must fall within the area claimed as buildable land under this section. (Added 1983)

7. No portion of any lot that is less than seventy-five feet in width may be counted as buildable area or toward meeting the minimum lot size under this section. (Added 1983)

8. To facilitate determination of the existence of the required building area, the applicant shall designate that area on each plan submitted pursuant to Section VIII.B, together with accompanying evidence to demonstrate compliance. The Building Inspector in interpreting this provision may seek advice of the Planning Board.

2. Lot Coverage

a. All buildings, including accessory buildings, shall not cover more than twenty-five (25) percent of the area of any lot; except that buildings for business use in a B-Business District may cover not more than seventy-five (75) percent of the area of any lot or as may be shown on an approved site plan.

3. Minimum Lot Frontage

a. Each dwelling in an R-1a Residence District and every building which includes a dwelling in any District shall have a minimum lot frontage of one hundred twenty-five (125) feet.

b. Every dwelling in an R-1b District and R-A District shall have a minimum lot frontage of one hundred and seventy five (175) feet.

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c. In the B Business District the minimum lot frontage shall be in accordance with an approved site plan submitted in accordance with Section VI.H below.

d. Lot frontage shall be measured along the property line of (i) a public way or a way which the Town Clerk certifies is maintained and used as a public way, or (ii) a way not less than fifteen feet (15) from the center line shown on a plan approved and endorsed in accordance with the subdivision control law, which shall thereafter be considered a street for the purpose of this By-law or (iii) a way in existence when the subdivision control law became effective in Hamilton (1955) having in the opinion of the Planning Board, sufficient width, suitable grades, and adequate construction to provide for the needs of vehicular traffic and to provide adequate access for fire, police, and emergency vehicles. (Amended 5/95, 5/97, 9/99)

e. In the case of creating a new street, frontage will be measured along the property line of the existing right of way of the existing road from the side line of the lot up to the point where the curve, based on a 25' radius, begins to separate from the property line to meet the proposed right of way of the new street. Please refer to section VI-B 6 for the creation of new streets.

4. Frontage Exception for Larger lots

a. Notwithstanding the above provisions, a lot in an R-1a, R-1b, or R-A district need not have the specified amount of street frontage provided that:

1. The area of the lot exceeds by at least three acres the minimum area required for such an R-1a, R-1b, or R-A district or Groundwater Protection Overlay District.
2. The lot has a minimum continuous street frontage of not less than (50) fifty feet and a width of not less than (50) feet at any point between the street and the site of the dwelling.
3. The minimum width of lot measured at the shortest distance between side lot lines taken through the dwelling site on said lot shall be a minimum of (150) one hundred fifty feet.
4. There is not more than one other such lot with frontage contiguous to it, and
5. It is not, in the opinion of the Planning Board so located as to block the future extension of a dead end street.
6. See Section VI.B.1.c. for Computation of Lot Area.

b. Notwithstanding any other provisions, no such lot as described in Section VI.B.4.a., above on which a dwelling is located, shall be hereafter subdivided, reduced in area or changed in size or shape.

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- c. Except by special permit granted by the Planning Board, no more than two lots may share an access driveway. Common driveways shall conform with Section VI.B.12. of this by-law (Amended May 13, 1985 and May 18, 1989)

5. Minimum Width and Depth of lot

- a. The minimum width and depth of lot at building in any R Residence District shall be one hundred (100) feet measured as the shortest distance between side lot lines and front to rear lines taken through each dwelling on said lot. In the event of an irregularly shaped lot and a question as to the identification of the appropriate side lot lines or front and rear lines for the foregoing measurement, the matter shall be decided by the Building Inspector with the advice of the Planning Board.
- b. No lot, laid out after the adoption of this amendment, shall have a lot width measured between side lot lines of less than seventy-five (75) feet at any point in the buildable portion of said lot.
- c. Every lot laid out after the adoption of this amendment shall have a minimum depth of seventy-five (75) feet along 80% of the minimum lot frontage. (Adopted May 13, 1985)

Please refer to Section VI-B1 for area requirements

6. Minimum Lot Dimensions When Creating a New Street (Amended 5/90 & 9/99)

Notwithstanding the above provisions, no lot shall be altered to create a new street laid out under the Subdivision Control Law unless:

- a. the center line of the new street is at least 125 feet from the side line of the lot, and
- b. the lot as altered maintains minimum lot frontage on the existing street. (Ed. note: this section (VI.B.6.) was added May 13, 1985).
- c. Please refer to section VI-B3.

7. Front Yards

Every structure in all districts shall be so located as not to extend within:

- a. Twenty-five (25) feet of the street line or fifty (50) feet from the street center line, whichever is greatest; except that no building need be set back more than the average setback of the buildings on either side, a vacant lot being counted as though occupied by a building set back fifty (50) feet from the street center line.
- b. In case of lots abutting on more than one street, the full width of the front yard shall be provided from each street.

8. Rear and Side Yards

Ed. Note: See also Sec. V.A.9.b. for setbacks for accessory farm buildings, barns or shelters and Sec. VI.C. for setbacks for other accessory buildings including sheds.

a. Every dwelling or part thereof in a residential district and every dwelling or part thereof in any district shall be so located as not to extend within fifteen (15) feet of a side or rear lot line or within twenty (20) feet of any other building.

b. Structures other than dwellings in a Business District shall be located to provide rear and side yards in accordance with the site plan required under Section VI.H, and paragraph VI.B.9.& VI.B.10., below.

9. Watercourse Yards.

There shall be a yard or setback between any building or structure in any district and a watercourse, stream, swamp or floodway of a width to leave the area subject to flooding free of obstruction.

10. Appurtenant Open Space.

No yard or other open space required for a building by these By-laws shall, during the life of such building, be occupied by or counted as open space for another building.

11. Corner Clearance.

Within an area formed by the side lines of intersecting streets and a line joining points on such lines fifteen feet distant from their point of intersection, or in case of a rounded corner, from the point of intersection of their tangents, no structure shall be erected and no foliage maintained between a height of three and one half feet and a height of eight feet above the plane through their curb grades.

12. Driveways.

a. Reconstruction and/or resurfacing of an existing driveway, which will result in a significant change of grade in the driveway shall require approval of the Department of Public Works. (Added 5/96)

b. Interconnection with access street. The interconnection of any access way with a Town way, a way open to public use, or a private way laid out for ultimate public use, whether or not constructed, and the slope of such way, shall be approved by the Board of Public Works, (in consultation with the Police Department for safety issues) and in connection with said approval the owner shall release the Town from all damages resulting from the flow of water from such way. Said approval shall be in

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the form of a signed Curb Cut Permit. The Town may require two or more lots to share a common driveway when, in the opinion of the Police Department, it is deemed necessary for safety issues. (Amended 5/96)

c. Common Driveways. Except by special permit granted by the Planning Board, no more than two lots may share an access driveway. (Amended May, 1985). No building permit shall be granted for any lot until there has been compliance with the following:

1. Curb Cut approval as described in b above. (Added 5/96)
2. A common driveway shall lie entirely within the lots to which it provides access, and shall comply with all driveway regulations in this section.
3. No building permit shall be granted for any lot with access by a common driveway until an easement providing for maintenance and snow removal and running with the land in perpetuity is executed by the owner(s) of the lots sharing the driveway, and recorded at the Registry of Deeds, and evidence thereof is submitted to the Building Inspector
4. Common driveways may never be used to satisfy zoning frontage requirements. (Added 5/95)

d. Minimum Driveway Standards (Added May 18, 1989)

(Note: See Figures A & B on the next page.)

Driveway access to the dwelling or other building site shall be indicated on the plans submitted to the Building Inspector at the time of Building Permit Application. In determining compliance with the following standards, the Building Inspector must confer with the Board of Public Works.

Driveways shall provide both access and turnaround for vehicles including moving vans, ambulance, fire and police vehicles without substantial hardship, financial or otherwise in construction. Such a driveway shall have

1. width of at least 10 feet but shall be cleared to a width of at least 12 feet and
2. centerline radius of at least 60 feet and
3. maximum grade of 10 per cent and
4. a hydrant if the following conditions exist: when a proposed house or other building site is greater than 1000 feet as measured along the proposed driveway from an existing or proposed fire hydrant, a town water line and hydrant acceptable to the Board of Public Works shall be installed. Such hydrant shall be not more than 1000 feet along the driveway from the dwelling and

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5. flare of 5 feet at intersection of driveway with public way as shown in figure A and
6. a leveling-off section as shown in figure B.

Plans showing special requirements for driveways connecting with state-maintained ways are available at District or State Offices of the Massachusetts Department of Public Works.

13. Windmill setbacks must comply with all the preceding yard requirements, and also with the regulations for wind energy conversion systems set forth in Section VI.1, below.

C. Accessory Buildings

Accessory Buildings, including detached garages, shall not be located closer than twenty-five (25) feet from the street line, nor any closer to any side or rear lot line than the height of such accessory building above the ground or twenty (20) feet, whichever is greater, provided, however, that one storage shed not larger than 8 feet by 12 feet and not greater than 10 feet in height may be located not less than 5 feet from the rear and side lot lines. No accessory building shall be located closer than twenty (20) feet from any dwelling or main structure on a lot unless both structures conform with regulations relative to fire safety.

D. Off-Street Parking and Loading Areas

1. Off-street parking spaces and loading areas shall be required in at least the ratio specified below for the following uses of land and buildings:
 - a. Dwellings: one parking space for each dwelling unit therein.
 - b. Places of public assembly not including churches; one parking space for each three seats therein.
 - c. Schools: one parking space for each classroom therein, plus one space for each two employees or staff positions other than teachers; and where an auditorium is provided, one space for each three seats therein.
 - d. Other service establishments and retail businesses: one parking space of three hundred (300) square feet for each one hundred (100) square feet or fraction thereof of gross floor area, excluding basement storage area.
 - e. Other uses requiring off-street parking and loading space: Space in accordance with anticipated needs as determined by Board of Appeals with the advice of the Planning Board.
2. Required off-street parking and loading spaces shall be located on the same lot as the building or use they are intended to serve, or in the case of parking spaces, on other premises within 200 feet of such lot.
3. Required off-street parking and loading spaces shall not hereafter be reduced, nor any loading space counted as or substituted for a parking space.
4. Required off-street parking spaces shall each contain a minimum of 300 square feet of area for each vehicle suitable for parking and turning and exclusive of necessary drives and other access ways from the street to the parking area; provided, however, that a driveway or garage may be considered as the required parking space for a single family dwelling.
5. Required off-street parking and loading spaces shall all have adequate vehicular access to a street.
6. No part of an off-street parking or loading space required for any building or use shall be included as a part of an off-street parking area required for another building or use unless a determination is made by the Board of Appeals to the effect that the period of usage of such structure or uses will not be simultaneous.
7. All off-street parking areas and loading areas, other than those provided for dwellings but including drives and other access ways, shall be treated with bituminous or other surfacing material; and shall be provided where necessary with appropriate bumper and wheel guards. Illumination shall be so arranged as to deflect

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the light away from adjoining lots and abutting streets; and screening shall be provided where required by this By-law.

8. Parking Areas and loading Areas in Business District shall be shown on Site Plans, as provided in Section VI.H. below.

E. Signs All signs require building permit approval (amended 5/6/96, Article 19)

1. In every residential district signs will be permitted in conformity with other provisions of this By-law:

- a. One (1) sign pertaining to the lease, sale or use of a lot or building on which such sign is placed not exceeding a total area of six (6) square feet.
- b. One (1) sign for identification of professional and home occupations or of occupant, not exceeding a total area of three (3) square feet.
- c. For directional purposes, not exceeding a total area of three (3) square feet.

2. Subject to permission of the Board of Appeals for specified periods not exceeding one year, other and larger signs.

3. No sign in any district shall be flashing, internally illuminated, animated or illuminated by other than white light, nor project beyond any street line or above any building.

4. In B-Business District signs will be permitted:

- a. Advertising goods and services available on the premises not exceeding one (1) square foot for every linear foot of store frontage and in no case exceeding a total area of thirty-six (36) square feet per lot.
- b. For identification of the business, company or agency on a wall or parapet of a main building not exceeding thirty (30) square feet for each separate business in a B-Business District.
- c. One (1) sign pertaining to the lease or sale of a lot or building on which such sign is placed not exceeding a total area of six (6) square feet.
- d. For the purpose of identifying a business development or shopping center, one (1) free-standing sign with a total of thirty-six (36) square feet of area for each street on which the business development fronts.
- e. Projecting Sign Clearance. A clear space of not less than 12 feet shall be provided below all parts of such signs.

F. Standards for Business Development:

Buildings and uses permitted in Section V.B above shall conform to the following minimum standards for construction, use and operation as evidenced by detailed plans submitted to the Building Inspector for review and certified as to compliance by the architects and/or engineers responsible for such plans. In the event of any reasonable doubt by the Building Inspector as to compliance with the following minimum standards,

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he shall refer the Building Permit in such case to the Board of Appeals which shall take action in accordance with Section IX. (Ed. Note: State Handicapped Access Regulations may apply).

- a. Waste disposal and water service: Water service, and waste and refuse disposal methods shall comply with pertinent Health Regulations and shall be in accordance with the approved site plan.
- b. Storage: Equipment, including company owned or operated vehicles, shall not be stored between the street line and the front line of structures on the subject lot, or if there be no structure within fifty (50) feet of the street line, and in no case to be visible from the street.
- c. Screening by fences, walls and/or evergreen planting, in accordance with an approved site plan, shall be provided, erected and maintained to shield the business uses of land and buildings from any adjoining residential property.

G. (Reserved for future amendments)

H. Site Plan Review (Amended May 18, 1989)

1. Purpose.

Site Plan Review is intended to allow the Town to review and impose reasonable conditions on development, allowed as of right or by Special Permit, which by its nature or location has the potential for significant impacts on traffic circulation, public safety, public utilities, environment and neighborhood character and appearance. The purpose is to provide a mechanism and a process for fitting the proposed development to neighborhood character, scale, and infrastructure, and to reasonably protect the Town and abutting property owners from potential negative impacts. These purposes are to be served by providing for consistent submissions of thorough data for each proposal for Town review; and for consideration by Town boards as specified below, in terms of specific criteria; and for issuance of a Site Plan decision setting whatever terms and conditions, if any, are necessary to achieve the purposes of Site Plan Review, consistent with Town by-laws and regulations. Provision is made to exempt small modifications and improvements from [portions of] this Section, and to coordinate Site Plan Review with other required review of Special Permits and Alteration of Non-Conforming Uses.

Please note: Projects subject to Site Plan Review may also be subject to other sections of the Zoning By-law and other Town approvals, including but not limited to Special Permits (ZBL Sec. V), Alteration of Non-conforming Use (ZBL Sec. III), Conservation Commission approval of work in or near wetlands and Board of Health approval of sewerage disposal, drainage and food service, and the requirement for Building Permits, (ZBL Sec. VIII and Mass. Building Code).

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2. Projects Requiring Approval. (Amended November 13, 1990)

No Building Permit shall be applied for or issued for any construction or alteration subject to this Section, as specified below, until a Site Plan has been approved or conditionally approved as set forth herein.

Site Plan Review shall be required for the following construction, alteration and uses:

a. Except for the exemptions provided below in b) and c), Site Plan Review is required for any new construction or alteration or expansion of, or conversion to a business, office, industrial, institutional or multifamily residence building or structure in any District. This includes parking lots over 5 spaces serving any of these types of buildings, schools, hospitals, nursing homes, life care facilities, children's camps, campgrounds, churches, multi-family structures for more than two families, government buildings and structures, farmstands, and buildings in commercial, office, industrial and scientific research use under ZBL Sec. V.A.11.i and V.B.11.g, stables providing boarding and/or services for more than 6 horses other than those owned by the residents of the lot on which the stable is located, AND greenhouses for commercial production of plants or produce. Site Plan Review is required for interior alterations which increase the commercial, industrial, institutional or multi-family residential floor area within an existing building, and/or which change the number of separately leaseable or saleable spaces within an existing building. Site Plan Review is not intended to violate the Zoning exemptions provided in MGL Ch. 40A Sec. 3, but only to allow for the "reasonable regulation" provided for thereunder. (Permitted Use Sections of this By-law (V.A, V.B) also indicate which uses do and do not require Site Plan Review.)

(All the exemptions from Site Plan Review set forth in items b) and c) below also apply to construction in Residence Districts under this item.)

b. Proposed additions or alterations to existing buildings subject to Site Plan Review which would either add new floor area totaling less than 10% of the current ground floor area of the existing building, or which are estimated to cost less than 10% of the current 100% assessed valuation of the building shall require only Abbreviated Site Plan Review as provided below. For purposes of applying this guideline, when ground floor area includes attached residential floor area or attached commercial greenhouses, the area of the residential and/or greenhouse portions shall be deducted before applying the "10% threshold factors"

c. Exemptions from Site Plan Review (Note: Building Permit and any required Health, Conservation or other permits still required where applicable)

1. Interior alterations shall not require Site Plan Review UNLESS the alterations increase the floor area within the building devoted to any of the uses listed in item 2.a above (Projects Requiring Approval), AND/OR change the number of separately leaseable or saleable spaces within the building. (Conversion of the interior of a residential building to any of the uses listed in 2.a above would

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require Site Plan Review). Examples of exempt interior alterations are: paneling, shelving, partitions other than those creating new commercial units, counters, flooring and general interior decoration. (Amended November 13, 1990)

2. Repairs, re-painting, re-siding, re-roofing and window replacement shall not require Site Plan Review unless the activity also increases floor area.

3. Replacement of parts of a partially damaged building that would normally require Site Plan Review under a) above with generally identical portions shall not require Site Plan Review. [Total replacement of a destroyed building that would normally require Site Plan Review under a) above shall require Site Plan Review.]

4. Demolition shall not require Site Plan Review. (Note: Demolition in the Town Historic District does require Historic District Commission review.)

5. Change of tenant of commercial building shall not require Site Plan Review unless there is also an amount of new construction triggering Site Plan Review under b) above.

6. Customary home occupations permitted under Sec. V.A.8 of this By-law shall not require Site Plan Approval. (Added November 13, 1990)

3. Application and Decision Process.

a. Regular Site Plan Review.

1. Except for those proposals eligible for Abbreviated Site Plan Review (2.b above), the applicant shall file 13 copies of all Site Plan Review materials as specified below, accompanied by a fee of \$75 plus \$50 for each 1000 square feet of new floor area created. The application shall be submitted to the Town Clerk. The application will not be considered legally submitted, for purposes of starting the review "clock", until it is complete and all copies are submitted. The Town Clerk shall thereafter forward five copies to the Board of Appeals and one copy each to the Building Inspector, Planning Board, Bd. of Selectmen, Bd. of Health, Conservation Commission, Police/Fire Dept., and Handicap Coordination Committee for their comments, retaining one copy for the Town Clerk file. At or before the time of application, the applicant shall arrange to meet with the Planning Board to discuss the proposed Site Plan, as a basis for that Board's recommendation to the Bd. of Appeals. (The applicant is encouraged to meet informally with any of the above Boards/Departments for "input".) The commenting Boards/Commissions/ Departments shall transmit their comments in writing to the Bd. of Appeals within 35 days from the date of application.

2. The Board of Appeals shall hold a public hearing within thirty-five (35) days of the date of an application. Notice of the public hearing shall be given by publication in a newspaper of general circulation in Hamilton in each of 2

successive weeks, the first publication to be not less than 14 days before the day of the hearing. In addition, all abutters within 300 feet of the property line of the petitioner, as they appear on the most recent assessor's list, shall be notified by mail no less than 14 days before the hearing. The Board shall make its determination within 65 days of the public hearing, unless the applicant specifically grants an extension of the review period in writing. Failure to decide within 65 days of the public hearing shall constitute approval of the Site Plan by the Bd. of Appeals unless the applicant granted the above-mentioned written waiver. (The Boards shall be encouraged to act in a shorter time period whenever possible.)

3. Where proposed new construction or alteration subject to Site Plan Review under this section IS ALSO an alteration of a pre-existing non-conforming use or structure under Sec. III of this By-law, the Bd. of Appeals shall consolidate review under Sec. III.A. 1-3 with Site Plan Review under Sec. VI.H.

4. Where proposed new construction or alteration is subject to both Site Plan Review AND a Special Permit, the Bd. of Appeals shall conduct both processes simultaneously, using the time limits of the Special Permit process to cover both reviews.

b. Abbreviated Site Plan Review.

1. If the proposed construction and/or change of use is eligible for Abbreviated Site Plan Review under Sec. 2.b above, the Applicant shall file 8 copies of the limited materials as required in 4) below with the Town Clerk, along with an Application fee of \$75. The application will not be considered legally submitted until it is complete. The Town Clerk shall forward 5 copies to the Board of Appeals, and one copy to the Building Inspector and Planning Board, retaining one copy for the Town Clerk file. The commenting boards shall transmit their comments to the Bd. of Appeals within 35 days of the date of application. NO Public hearing is required for Abbreviated Site Plan Review. The Bd. of Appeals shall make a decision within 65 days of the date of application, and failure to decide within this time period shall constitute approval of the Site Plan unless the time period is specifically extended by the applicant in writing

4. Required Site Plan Contents

a. Regular Site Plan Review

1. Unless waived by the Bd. of Appeals, all site plans shall be prepared to scale and be of professional quality. All site plans shall be standard 17"x24" or 24"x36" sheets and shall be prepared at a sufficient scale to show the following required items.

(Please note: Applicant may want to have Site Plans prepared by Registered Architect or Engineer for proposals that require Architect/Engineer plans for Building Permits under the Mass. Building Code.)

a. location and boundaries of existing (and proposed) lot, adjacent streets or ways including rights-of way and easements, and the location and owner names of all adjacent properties.

b. the size of the lot, frontage and yards.

c. all existing and proposed buildings and structures, including dimensions.

d. elevation drawings (architectural appearance) of the building or building with addition, from each side. (For additions/alterations, show only the affected sides.)

e. the location and dimensions of all parking and loading areas, driveways, walkways, access and egress points, specifically as they relate to street traffic; number of parking spaces, with note comparing total to Sec. VI.D requirement; and indication of facilities for handicapped access per State Law.

f. if the project includes any grading and site work, topography of the site at 2-foot intervals based on U.S.G.S. data, showing both existing and proposed contours.

g. the location and description of all existing and proposed sewerage disposal and treatment systems, and underground storage tanks, water supply, storm drainage systems, utilities, and refuse disposal dumpsters;

h. location, height, and type of all external lighting;

i. location, height, dimensions and appearance of signs;

j. proposed landscaping including the location and description of existing large trees, proposed screening, buffers, fencing, plantings, open spaces and recreation areas;

k. statement of any other local and/or state permits required of the project.

2. Other materials

- a. completed Site Plan application form available in Town Clerk's office.
- b. When the Board deems it necessary, it may require that the applicant provide at his expense, supplemental data on traffic impact, including estimated daily and peak hour vehicle trips to be generated by the site, estimated number of employees and truck delivery schedule and hours of business;
- c. When the Board of Appeals deems it necessary, it may require that the applicant provide at his expense supplemental data and analysis on potential environmental impacts of the proposed project on air quality, surface and groundwater quality, site and neighborhood drainage conditions. The Board may require that such studies be prepared by registered engineers or other appropriately qualified individuals.
- d. When the Board of Appeals deems it necessary, it may require that the applicant pay a review fee to cover the reasonable costs of consultants engaged by said Board to assist in review of the proposed Site Plan, as authorized and limited by M.G.L. Ch. 44, Sec. 53G, and Sec. IX.H. of this Zoning By-law. (Added Nov. 13, 1990)

b. Abbreviated Site Plan Review Plans and Submission Contents

1. For projects qualifying for Abbreviated Site Plan Review under H.2.b above, the basic plan standards (4.a.1) shall apply, and the Site Plan shall show items a),b),c),e), and g) of the Regular Site Plan requirements and only those elements of the remaining items d), f), and h)-k) that will be changed by the proposed construction or alteration. Along with the Site Plan, the applicant shall submit a completed Site Plan application form available from the Town Clerk's office.

5. Site Plan Review Guidelines

The following guidelines shall be considered in the review and evaluation of a site plan.

- a. The plan shall show compliance with Zoning By-law requirements for parking, signage, loading, Site Plan, heights, lot dimensions, and all other applicable requirements of this By-law.
- b. The proposed project should be compatible with existing natural features of the site, and compatible in architecture and scale with the surrounding area.
- c. The plan shall show provision for landscaping and open spaces that enhance the proposed development from within and without, which provide screening and buffers as necessary and which maximize amenity for customers, neighbors, and the general public.

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- d. The proposed project shall provide for safe and convenient vehicular and pedestrian movement within the site in relation to adjacent ways, and provide for compliance with State handicapped access requirements, and provide for access and egress by emergency vehicles.
- e. The proposed project shall provide for location and screening of exposed storage areas, machinery, service areas, dumpsters, utility buildings and structures and other unsightly uses to maximize amenity for neighborhood. The Board may require landscaping and/or fencing to provide needed buffers.
- f. The proposed plan shall be consistent with the capacity of local infrastructure, such as water supply, utilities, drainage and streets, or shall provide for such improvements as necessary.
- g. The plan shall provide for compliance with Board of Health, Conservation Commission and other Town and State regulations. Where applicable, Site Plan may be made conditional upon Board of Health, Conservation Commission, State Dept. of Public Works or other approvals, which shall be specifically referenced in the decision.

6. Final Action

The Board of Appeals final action shall consist of either:

- a. A written approval of the Site Plan, with a determination that the proposal meets the criteria set forth in this by-law, or;
- b. a written denial of the application stating the reasons for such denial, or;
- c. approval subject to any conditions, modifications, and restrictions as the Board of Appeals may deem necessary, including phasing of construction and performance guarantee for any public improvements.

7. Implementation of Site Plans

Construction of any approved Site Plan project shall begin within one year and be completed within two (2) years of the date of approval, unless extension is granted by the Board of Appeals after notice and a public hearing. Otherwise approval shall lapse.

I. Wind Energy Conversion Systems

1. Administration

- a. Placement of Wind Energy Conversion Systems-hereafter referred to as windmills - on any property in the Town of Hamilton shall require a special permit from the Board of Appeals, in addition to a building permit and any relevant electrical permits. Permit procedure shall be as set forth in Section IX of this By-law.
- b. The applicant shall submit a plan and supporting data, which shall bear the seal and signature of a registered professional engineer licensed to practice in Massachusetts. Submissions shall include the following :
 1. a plan showing property lines of the applicant and abutters, proposed location of the windmill, location of buildings, overhead transmission and distribution lines, and any radio or telecommunications towers within 200 feet of the windmill; drainage or utility easements crossing within 200 feet of proposed power or control lines to or from the windmill; and location of guy wire anchors, if any;
 2. a dimensional representation of the windmill mounted on its support structure, including foundation dimensions (both surface and depth), foundation materials, method of attaching tower to foundations, windmill dimensions including, tower height and rotor diameter, and clearance distances of blades to ground and nearest structure;
 3. statement as to whether the proposed windmill is a tested production model, or an experimental, one-of-a kind or prototype design;
 4. windmill design data including manufacturer's specifications and installation/operation instructions; certification by the manufacturer or a registered engineer that tower design is sufficient to withstand wind load requirements for structures as established by the Mass. Building Code;
 5. site-specific wind speed data including the monthly mean wind-speed for a period no less than 6 months.
- c. Abandonment: If the Building Inspector determines that any windmill has been abandoned for more than 12 months, or has become a hazard, he may revoke its permit and may require that it be removed by the owner, subject to the procedures and penalties set forth in Mass. General Laws Chapter 139, Section 3A and Mass. General Laws Chapter 143, Section 9.

2. Windmill Standards

- a. Setback: The windmill tower shall be set back at least one tower height plus one rotor radius from any property line, except that setback may be reduced by the Board of Appeals, with the advice of the Building Inspector, if the Board of Appeals finds there is no risk to the public welfare, and if all affected abutters grant written permission. In making this determination the Board may consider the safety record for the type of machine proposed, and the consequences of a tower failure for the proposed type of tower.
- b. Height: The Board of Appeals shall determine whether the proposed height is acceptable, based on documentation of the machine's safety, and on the topography of and impact on the proposed site and the neighborhood.
- c. Minimum blade height, Minimum blade elevation shall be not less than 15 feet above the ground at the lowest point of blade arc.
- d. Noise. The windmill shall not produce a noise level at the property line deemed to cause a nuisance to abutters.
- e. Labeling Requirements: At least one sign shall be posted near ground level on the tower structure warning of high voltage. In addition, the following information shall be posted on a label on the generator or alternator of the windmill, and on the windmill control panel:
 1. Maximum power output of system and wind speed at which it is achieved.
 2. Nominal voltages and maximum current;
 3. Manufacturer's name and address, model number and serial number;
 4. Normal and emergency shutdown procedures;
 5. Maximum windspeed the windmill, in automatic unattended operation, can sustain without damage to structural components, or loss of ability to function normally.
- f. Safety: The design of the proposed windmill shall be such that:
 1. In the event of loss of utility power, windmill shall not backfeed a dead power line;
 2. In the event of high wind speeds, windmill shall brake or feather below survival windspeed;

3. In the event of blade imbalance, windmill shall be able to support added blade weight of at least 10% at the tip of any blade.

g. Wind Capacity. The windmill, inclusive of its supporting structure, shall be designed to withstand a wind speed of at least 120 miles per hour,

h. Access: To prevent unauthorized climbing, tower access shall be restricted by EITHER:

1. an impassable fence and locked gate, both at least 6 feet high, constructed around the perimeter of the base of the supporting structure, provided that such barrier is not required for any windmill erected on dwelling or other structure which provides no opportunity for climbing for at least 6 feet;

2. OR removal of climbing apparatus on the support structure to at least 10 feet above the ground;

3. OR anticlimbing shrouds over the bottom portion of the structure

i. Building Code: Tower construction shall conform with the Mass, State Building Code as applicable.

j. Guy Wires. If the tower is to be supported by guy wires, fencing must be provided to prevent grazing animals from rubbing against the wires, as uneven tension on wires can make tower unstable.

k. Output: Any windmill or windmill-farm generating over 25 kilowatts shall be considered a commercial use, and must comply with the requirements of Section VI.H of this by-law ("Site Plans") in addition to complying with this section.

l. Electromagnetic Interference with radio frequency communication, traceable to the operation or location of the windmill, shall be limited in accordance with all applicable sections of the Federal Communications Commission specifications.

J. Communication Towers (CT) and Telecommunication Antenna Facilities (TAF)

(Adopted May 7, 2001, and replaces former Section VI.J. which was adopted November 16, 1998)

1. Purpose:

The purpose of this section is to establish general guidelines for the siting of communication towers and telecommunication antenna facilities. The goals of this section are to: minimize the adverse visual impacts of towers and facilities; to avoid damage to adjacent properties; to lessen impact on surrounding properties; to lessen impact on traffic; to encourage the location of towers on municipal land; to minimize the number of towers throughout the community; to require the co-location of new and existing tower and facility sites; to encourage users of towers and facilities to locate them, to the

extent possible, in areas where the adverse impact on the community is minimal; and to make available all CT and TAF locations to local municipal agencies.

2. Permitting

a. No communication tower or telecommunication antenna facility may be erected without first obtaining a Special Permit from the Special Permit Granting Authority, SPGA. The SPGA under this section shall be the Planning Board. Permits shall only be granted in accordance with the procedure for notice hearings, decisions and appeals set forth in MGL Chapter 40A, Sections 9 and 11. Any permit granted hereunder shall lapse within one year if substantial use has not commenced unless satisfactory reasons have been proven to the SPGA.

b. Expiration of Permit:

The Special Permit granted under this section shall expire within five (5) years of the date of issuance of the permit. Renewal of this permit shall follow the process and rules of *Abbreviated Site Plan Review* procedure as found in this by-law, Section VI.H.3.b. In this case, for CT and TAF, the Planning Board shall administer *Abbreviated Site Plan Review*. Each renewal shall be good for five (5) years unless specified otherwise by the SPGA .

3. Application

An application for a Special Permit under this section shall be filed with the SPGA in compliance with *Planning Board Rules and Regulations Governing Special Permits*, and applicable sections of the Hamilton Zoning Bylaws. In addition to the Site Plan Contents requirements (of Section VI.H), the following shall also apply:

a. The site plan shall be prepared by a Registered Professional Engineer licensed by the Commonwealth of Massachusetts and shall include the following minimum requirements:

1. Tower and/or facility location, including guy wires, if any, and tower height.
2. Topography
3. Fencing and landscaping
4. Access and parking
5. Lighting

6. Areas to be cleared of vegetation and trees

7. Site boundaries

8. Abutters

b. A locus map will be prepared by a Registered Professional Land Surveyor and shall show all streets, bodies of water, landscape features, historic sites, habitats for endangered species, and rights of way within two hundred (200') feet of the facility, and all structures within five-hundred (500') feet of the facility.

c. Reports prepared by one or more qualified professionals, which shall:

1. Describe the tower, the facility, and the technical, economic and other reasons for the tower and facility design, and the need for the tower at the proposed location.
2. Demonstrate that the tower and facility comply with all applicable standards of the Federal and State governments, including, but not limited to, radio frequency emissions, air navigation safety, and environmental impact. Applicant should also demonstrate that the facility and/or tower should also demonstrate compliance with applicable industry standards for structural integrity, such as EIA/TIA Standard 222 in its most current revision.
3. If a tower or other new antenna support structure is proposed, describe the capacity of the structure to accommodate additional communications services including the number and type of communications facilities that it can accommodate and the basis for the calculation of capacity.
4. Demonstrate that the tower and site comply with this regulation.
5. Describe the role the proposed facility will play in the Applicant's development of its communications network, including demonstrating the need for the proposed height and location by making a technical showing. Such a technical showing will include showing coverage from existing and other proposed facilities in the region, coverage anticipated from the proposed facility, coverage from the proposed facility at lower antenna elevations (when relevant).

6. Describe how the Applicant's communications needs are expected to evolve over a five to ten year period, with particular emphasis on how it will affect the need for the proposed facility and for additional facilities in town.

7. Describe other feasible sites, including existing sites, if any. Demonstrate with a technical showing that they do not have significantly less impact on the community than the proposed facility and/or demonstrate that the coverage obtained from one or more alternative installations is significantly poorer than that from the proposed facility. The SPGA may require data for comparing the alternatives with the proposed facility, including coverage maps and/or visibility maps of the proposed facility and the alternatives.

8. Describe the appearance, location, and anticipated use of any generators that support the functions of the tower.

d. Regulating agencies

Applicant shall provide evidence that the proposed facility or tower will comply with or is exempt from applicable regulations administered by the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission, the Massachusetts Department of Public Health, and other relevant regulatory agencies. Such evidence may be in the form of official agency documentation, documentation prepared by a qualified professional, or other forms of written evidence satisfactory to the SPGA. The Applicant shall send a subsequently received agency statement, if any, to the SPGA, or the SPGA may require verification of agency determinations by the town's Building Inspector prior to issuance of a building permit.

e. On site demonstration

When a tower or other new antenna support structure is proposed, this paragraph shall apply. Between the date of public notice of the Public Hearing and the hearing itself, a balloon shall be put in place at the height of the proposed tower or support structure, for not less than three (3) days. The balloon shall be floated at a height equal to the top of the proposed tower or support structure. The Applicant may propose alternative means of complying with this requirement. The Applicant shall also prepare, for the Public Hearing, photosimulations of the tower on that site from key locations as determined by the SPGA. The SPGA may require that a visibility map be created by a qualified professional to indicate where and to what degree the proposed structure and/or antennas will be visible from public ways or land. Such map may be used to compare the visibility of the

proposed facility with maps of the visibility of existing facilities, of alternative heights of the proposed facility, or of feasible alternative facilities.

4. Approval

A Special Permit shall be granted by the SPGA in accordance with Massachusetts General Laws, Chapter 40A, Section 9 and the provisions of this Bylaw relative to Special Permits. Any extension of the tower or antenna support structure, addition of antennas not previously permitted, replacement of antennas with substantially different configuration or appearance, or construction of new or replacement towers or antenna arrays shall be subject to an amendment to the Special Permit, following the same procedure as for an original grant of a Special Permit.

Where the requirements of this Section VI.J. differ from or conflict with other requirements of this Bylaw, the requirements established herein shall prevail.

5. Location and site requirements:

a. The tower and its appurtenances shall be located in accordance with all applicable federal and state regulations in effect at the time of construction and further, the operation shall comply with all such regulations of these agencies during the entire period of operation. In addition, the tower and its facilities shall be located within the Town of Hamilton as follows:

b. New Towers or Antenna Support Structures:

New towers shall be considered only upon a determination by the SPGA that one or more existing structures or approved towers cannot physically accommodate, or cannot provide substantially the same service as, the wireless communication facilities on the proposed tower.

1. Towers shall be designed and made available for co-location of as many service providers possible, based on the structure height and appearance in the context of the tower sites. To the extent feasible for their sites, communications accessory buildings shall have the appearance of a single building, or otherwise be designed to provide an orderly appearance compatible with the community.

2. The setback from property lines shall be no less than a distance at least equal to the height of the tower. Whenever possible, setbacks behind existing trees and/or buildings is encouraged to provide visual masking of the tower and facility.

3. Setback from designated wetlands and water bodies shall be at least one hundred and fifty (150') feet.
4. Distance from all existing structures shall be at least five hundred (500') feet, excluding existing structures on the lot.
5. Fencing shall be provided to control access to the base of the tower, and such fencing shall be compatible with the scenic character of the Town and shall not be of barbed wire or razor wire.
6. Access shall be provided to a site by a roadway that respects the natural terrain, does not appear as a scar on the landscape, and is approved by the SPGA and the Fire Chief to assure emergency access at all times.
7. Consideration shall be given to design that minimizes erosion, construction on unstable soils, and steep slopes.
8. The Applicant shall demonstrate to the satisfaction of the SPGA that the location of the tower and/or facility is necessary and that the size and height are the minimum necessary for the purpose. The SPGA shall give consideration to the possible need for additional height to accommodate future co-locators. It may require that a structure be built to, or be designed to be extended to, a future height limit.
9. There shall be no signs, except for announcement signs, applicable warning signs, no trespassing signs and a required sign giving a phone number where the owner can be reached on a twenty-four (24) hour basis. All signs shall conform to the sign requirements of Hamilton Zoning Bylaws Section VI.E, and shall be subject to conditions of the Site Plan Review and Special Permit processes.
10. To the extent feasible all cabled network interconnections and utilities from and to the communications site shall be installed underground.
11. The tower and/or facility shall minimize adverse visual effect on the environment and the residents of Hamilton. The SPGA may impose reasonable conditions to ensure this result, including, but not limited to: painting, lighting standards, screening, and camouflage (see 6. below "Development Requirements").

12. Clearing shall be performed in a manner that will maximize preservation of natural beauty and conservation of natural resources, which will minimize marring, and scarring of the landscape or silting of streams.

- a. The time and method of clearing rights-of-way should take into account soil stability, the protection of natural vegetation, the protection of adjacent resources, such as the protection of natural habitat for wildlife, and appropriate measures for the prevention of silt deposition in water courses.
- b. Clearing of natural vegetation should be limited to that material which poses a hazard to the tower.
- c. The use of "brush blades" instead of dirt blades on bulldozers is recommended in clearing operations where such use will preserve the cover crop of grass, low growing brush, or other vegetation.
- d. Areas should be cleared only when necessary to the operation, maintenance, and construction of the tower.

6. Development Requirements: Visual Impacts of the Tower and/or Facility shall be minimized.

- a. Concealed or camouflaged facilities shall be provided to the maximum extent technically practicable. To the maximum extent practicable, towers and antenna facilities, if not camouflaged, shall be designed to provide a clean architectural appearance and to minimize any visually cluttered appearance.
- b. The Applicant shall demonstrate that the proposed tower and/or facility is the minimum height necessary to accommodate transmitters and receivers.
- c. Tower height shall be limited to fifty-five (55') feet and shall be designed to accommodate the use for which the application is made. Applications for Communication Towers in excess of fifty-five feet (55') shall be accompanied by a detailed technical showing as to the necessity of the additional height (co-location, reduced tower density in community, etc.)
- d. All CTs greater than fifty-five (55') feet in height shall be monopole in type.

- e. Night lighting of towers shall be prohibited unless required by the Federal Aviation Administration. Lighting shall be limited to that needed for emergencies and/or as required by the FAA. To the fullest extent practicable, facilities and towers shall be designed to avoid FAA-required marking and/or lighting requirements.
- f. Siting shall be such that the view of the tower from other areas of Town shall be as minimal as possible. The SPGA will pay particular attention to the visibility of the proposed structure from public ways, from historic districts, from popular scenic areas, and from natural views from residential neighborhoods.
- g. Access roads shall be designed to visually conceal all CTs.
- h. Shared use of towers and facilities is to be encouraged. When sharing a tower is technically not practical, replacement of the tower or the addition of a new tower may be considered. Towers shall be separated on a site so that each tower will not significantly impact the other.
- i. The tower and/or facility shall be designed to accommodate the maximum number of users technologically practical.

7. Conditions of Completion and Use:

- a. The date of completion shall be considered the date that the Building Inspector issues the Certificate of Occupancy, or the first day of beneficial use, whichever comes first.
- b. The Special Permit shall lapse after one year if substantial use or construction as granted by the permit has not commenced, except for good cause. Time required to pursue determination of an appeal shall not be considered part of the one-year limitation.
- c. Construction under the Special Permit shall be completed within 18 months of the issuance of the permit unless otherwise provided for in the permit, or in a subsequent amendment of the permit approved by the SPGA.
- d. Any tower or facility that is not operated for a continuous period of twelve (12) months occurring any time after the date of completion shall be considered abandoned. The owner of such tower and

facility shall remove the same within ninety (90) days after the abandonment period.

8. Performance Guarantees:

- a. Insurance in a reasonable amount determined and approved by the SPGA after consultation at the expense of the Applicant with one (1) or more insurance companies shall be in force to cover any liabilities that could arise out of the construction, operation and maintenance of the wireless facility and/or tower. Annual proof of said insurance shall be filed with the Town Clerk.
- b. An initial bond shall be posted to cover construction costs, in an amount approved by the SPGA. The SPGA may require posting of a bond to cover the cost of annual maintenance and repairs for the access road, site, and towers.
- c. Annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission and Massachusetts DPH for radio frequency emissions regulations, and Federal Aviation Administration for air navigation safety regulations, and other regulating agencies, shall be filed with the Building Inspector by the Special Permit holder.
- d. Failure to post an approved bond and/or provide proof of insurance and/or obtain annual certification shall be grounds to revoke the Special Permit.

9. Fees

In addition to the Special Permit Application fee, a Permit Fee for each approved application will be assessed by the Town of Hamilton in an amount as determined from time to time by the Selectmen. The intent of this fee is to offset costs to the Town to process the application, to assess compliance with section, and to conduct any other business related to the construction and operation of towers within the Town. This fee will be assessed upon approval of the Special Permit. Failure to pay the fee in full will render the Special Permit subject to revocation and non-renewal.

In addition, the SPGA may retain experts to review an application and the costs shall be borne by the Applicant, pursuant to the provisions of M.G.L. Ch. 44, Section 53G, *Employment of Outside Consultants*, and this bylaw.

10. Waivers

a. The SPGA may waive strict adherence to sections of this bylaw if it finds that the safety and well being of the public will not be adversely affected by such a waiver. For each waiver granted, the SPGA will make a written record indicating that the proposed tower and/or facility meets the Purpose(s) (1) of this bylaw.

b. All requests for waivers shall be made in writing on a separate sheet (or sheets) of paper and be attached to the Special Permit Application and be presented at the time of the initial application.

c. Requests for waivers shall indicate the section number and the reason the Applicant needs the waiver along with any documentation to support the request.

d. The SPGA will grant requests for waivers only upon a majority vote. Each request shall be voted on separately. The Applicant shall have the right to withdraw the request at any time prior to the actual vote. Once a request for a waiver is withdrawn it may not be presented again for a period of (1) year.

e. Requests for more than (3) three waivers will indicate to the SPGA the following:

1. The Site is inadequate for the proposed use,
2. The Site Plan is incomplete

11. Invalidation:

If any portion of this bylaw is declared to be invalid, the remainder shall continue to be in full force and effect.

SECTION VII. DEFINITIONS:

(Definitions amended January 31, 2005, Article 5, to delete all numerical item references to definitions. Former definition number is shown in () at the end of each definition.)
Definitions Amended: January 31, 2005

In this ordinance the following terms shall have meanings described below:

Accessory use or building: A use or building which is subordinate and customarily incidental to and located on the same lot with the principal use or building to which it is accessory, except uses accessory to scientific research, scientific development or related production, as set forth in this By-law, which uses need not be located on the same lot as the principal use. (formerly 1)

Adult Entertainment Use: An establishment, a building or portion thereof, or a use of land having a substantial or significant portion of its business activity, stock in trade, or other matter or materials for sale, rental, distribution, or exhibition which is distinguished or characterized by sexual conduct or sexual excitement as defined in Section 31, of Chapter 272 of the General Laws, or a depiction, description or representation thereof, or emphasis thereon, including but not limited to adult bookstores, adult cabarets, adult motion picture theaters, adult paraphernalia stores, and adult video stores as hereafter defined. (formerly 2)

Adult Bookstore: An establishment having as a substantial or significant portion of its stock in trade, books, magazines, or other matter which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. Ch. 272, Sec. 31. For the purpose hereof, the words "substantial or significant" shall mean more than fifteen percent (15%) of the establishment's inventory of stock, or more than fifteen percent (15%) of the establishment's gross floor area. (formerly 3)

Adult Cabaret: A night club, bar, restaurant, tavern, dance hall, or similar commercial establishment which features:

- a. persons who appear in a state of nudity; or
- b. live performances which are characterized by sexual conduct or sexual excitement as defined in G.L. Ch. 272, Sec. 31; or
- c. films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of sexual conduct or sexual excitement as defined in G.L. Ch. 272, Sec. 31. (formerly 4)

Adult Motion Picture Theater: An enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. Ch. 272, Sec. 31. (formerly 5)

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Adult Paraphernalia Store: An establishment having as a substantial or significant portion of its stock devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual excitement as defined in G.L. Ch. 272, Sec. 31. For the purposes hereof, the words “substantial or significant” shall mean more than fifteen percent (15%) of the establishment’s inventory of stock or more than fifteen percent (15%) of the establishment’s gross floor area. (formerly 6)

Adult Video Store: An establishment having a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual excitement as defined in G.L. Ch. 272, Sec. 31. For the purposes hereof, the words “substantial or significant” shall mean more than fifteen percent (15%) of the establishment’s inventory of stock, or more than fifteen percent (15%) of the establishment’s gross floor area. (formerly 7)

Aquifer: Geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water. (formerly 8)

Automobile Repair Shop: A shop or garage for the repair of motor vehicles, other than a private garage or service station. (formerly 9)

Building: A structure having a roof or cover and forming a shelter for persons, animals or property. (formerly 10)

Driveway: Any improved access for regular use by vehicle from the roadway of a street to a dwelling or other main building on a lot, or for use for which site plan approval or a special permit is required. A track or path used primarily by animals, or primarily for access of farm equipment to a field or orchard, or primarily for wood cutting, or for maintenance of a utility line is not a driveway. A driveway includes all of its branches. (formerly 11)

Dwelling: A building or part thereof designed, erected and used for continuous and permanent habitation for one family or individual, but not including trailers, however mounted, or commercial accommodations offered for periodic occupancy. (formerly 13)

Dwelling Unit: One or more rooms designed, occupied or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household. (Added Jan. 31, 2005)

Dwellings and Dwelling Units – Structural and Occupancy Characteristics:
(Added Jan. 31, 2005)

Single-family detached dwelling: A dwelling that is not attached to any other dwelling by any means and is surrounded by open space or yards on all sides, and that is occupied by not more than one household.

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Semi-attached dwelling: A building containing two dwelling units that are attached to each other by a common vertical wall, each dwelling unit having open space or yards on three sides and each dwelling unit having direct access to the ground, and each dwelling unit is occupied by not more than one household.

Two-family dwelling: A building containing two dwelling units, either side by side or one above the other under a single roof, and each dwelling unit is occupied by not more than one household.

Townhouse: A building containing three or more dwelling units in a row, in which each dwelling unit has its own front and rear access to the ground, no dwelling unit is located over another dwelling unit, each dwelling unit is separated from any other dwelling unit by one or more party walls, and each dwelling unit is occupied by not more than one household.

Three-family dwelling: A building containing three dwelling units, each of which has direct access to the outside or to a common hall that leads to the outside.

Four-family dwelling: A building containing four dwelling units, each of which has direct access to the outside or to a common hall that leads to the outside.

Multi-family dwelling: A building containing five or more dwelling units, except as otherwise defined in this bylaw.

Elderly: for the purposes of this bylaw, persons who are 55 years of age or older, except as otherwise defined in this bylaw. (Added January 31, 2005)

"Elder Housing" shall mean multi-family dwellings which contain three or more independent dwelling units consisting of a suite of rooms, its own bath and toilet facilities and its own kitchen facility. Each such building may also include central kitchen and dining facilities for providing meals to the residents thereof and their guests but not to the public and may also provide lounge rooms for the common use of residents and their guests. In one of such buildings, a unit may be included for occupancy by the manager of the development and his or her immediate family, one room of which may be used for an office, and, except for the unit so used and occupied by the manager, no unit in the buildings of the Development shall be occupied by more than two (2) persons, one of whom must be a person who is sixty (60) years of age or over. (formerly 14)

Family. Any number of persons living together as a single economic unit and ordinarily using a single cooking facility. (formerly 15)

Garage, Private: Covered space for the housing of motor vehicles, no more than two of which belong to others than the occupants of the lot on which such space is located. (formerly 16)

Gasoline Service Station: A structure or lot used for the sale of gasoline, oil, or automobile accessories or for servicing or storing motor vehicles, other than a private garage. (formerly 17)

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Gross Floor Area, (Business): The floor area within the perimeter of the outside walls of the building under consideration, without deduction for hallways, stairs, closets, thickness of walls, columns, or other features. (formerly 18)

Gross Floor Area, Residential: The area of a residential structure used for living space, excluding basement and attic area. (formerly 19)

Groundwater Protection Overlay District: The Groundwater Protection Overlay District shall consist of those areas shown on the Hamilton Groundwater Protection Overlay District Map, dated May 1985, amended May 2000 to include the aquifer protection districts of neighboring communities, that lie within the Town of Hamilton. Said map is hereby incorporated into the Zoning By-Law by reference, and shall be on file with the Town Clerk. (ed. Note: Every Zoning By-Law book sold after 1985 includes a Groundwater Protection District map and a regular Zoning District map.) (formerly 20)

Impervious Surface: Material or structures on, above or below the ground that do not allow precipitation or surface water to penetrate directly in the soil. (formerly 21)

Interim Wellhead Protection Area (IWPA): Where the Zone II has not yet been delineated and approved by the Massachusetts Department of Environmental Protection (DEP), an interim wellhead protection area shall consist of the area within a one-half mile radius (2,640 feet) measured from the well or wellfield for sources whose approved pumping rate is 100,000 gpd or greater. Regulations applying to a Zone II shall apply equally to an interim wellhead protection area. (formerly 22)

Lot: Shall mean an area of land in one ownership with definite boundaries, used, or available for use, as site for one or more buildings. (formerly 23)

Mining: The removal or relocation of geologic materials such as topsoil, sand, gravel, metallic ores or bedrock. (formerly 24)

Open Space and Farmland Preservation Development (OSFPD). A residential development in which the buildings are clustered with reduced lot sizes and frontage in order to protect open space, farms, and natural and cultural resources in the Town of Hamilton. OSFPD is the preferred form of residential development in the Town for parcels of ten or more acres with five or more lots or dwelling units. (Added January 31, 2005)

Potential Drinking Water Sources: Areas which could provide significant potable water. (formerly 25)

Recharge Area: Areas that collect precipitation or surface water and carry it to aquifers. Recharge areas may include areas designated as Zone I, Zone II or Zone III. (formerly 26)

Rooming or Boarding House: A dwelling in which the family resident therein provides eating/and or sleeping accommodations for not more than four paying guests who use only the cooking facility ordinarily used by the resident family. (formerly 27)

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Street: A public way, a way opened or dedicated to public use or a way plotted and laid out for ultimate public use, whether or not constructed. (formerly 28)

Street Line: The sideline of a street or way, as determined by deeds and plans recorded at the Registry of Deeds, or a building line laid out under Chapter 82, Section 37 of the Mass. General Laws; where no line is thus legally established, then a line parallel with and twenty-five feet distant from the center line of a traveled way. (formerly 29)

Structure: Any construction, erection, assemblage or other combination of materials upon the land made in such a manner as to indicate a purpose that it remain in position indefinitely. (formerly 30)

Temporary Additional Living Area: The Zoning Board of Appeals, as special permit granting authority, may issue a special permit authorizing the conversion and use of a portion of a single family dwelling as a separate living area with cooking facilities. (Section V.A.11.e.1). It is the intention of this provision that such additional living area shall not be used as an apartment for hire, but only as a convenience for the owner(s) under special circumstances. (formerly 31)

Toxic or Hazardous Material: Any substance or mixture of physical, chemical or infectious characteristics posing a significant, actual or potential hazard to water supplies or other hazards to human health if such substance or mixture were discharged to land or water of the Town of Hamilton. Toxic or hazardous material include, without limitation, synthetic organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids or alkalis, and all substances defined as Toxic or Hazardous under M.G.L. c.21C and 21E and 310CMR 30.00, and also include such products as solvents and thinners in quantities greater than normal household use. (formerly 32)

Trailer or "Mobile Home": Any structure or vehicle designed or adapted for human habitation which is capable of being moved from one place to another, whether by being towed or by being transported. (formerly 33)

"Wind Energy Conversion System": A device for converting wind motion into usable domestic energy. (formerly 34)

Zone I: The protective radius required around a public water supply well or wellfield; for purposes of this By-Law, the required radius is four hundred feet (400'). (formerly 35)

Zone II: The area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at safe yield, with no recharge from precipitation). It is bounded by the ground water divides which result from pumping the well and by the contact of the aquifer with less permeable materials such as till or bedrock. In some cases, streams or lakes may act as recharge boundaries. In all cases, Zone II shall extend up gradient to its point of intersection with prevailing hydrogeologic boundaries (a ground water flow divide in contact with till or bedrock, or a recharge boundary). (formerly 36)

SECTION VIII. ADMINISTRATION

A. Building Inspector

The provisions of this By-law shall be administered and enforced by the Building Inspector appointed by the Selectmen.

B. Permit Required.

It shall be unlawful to construct, alter, reconstruct or relocate any building or structure or to institute a new or altered use of a building, structure or land without first obtaining a permit from the Building Inspector . A permit shall expire one year from its date of issue. Special Permits and Site Plan Review under section VI.H. may be required for some uses prior to building permit issuance. See also section V.A.

1. Application for Permit. Any application for a permit shall be accompanied by a specific reference to the subject lot or group of lots in the same ownership as recorded in the Registry of Deeds, and by copies of a plan of the proposed lot, drawn to scale, showing the entire recorded ownership, all existing structures, all abutting streets, and the exact area and boundaries of the parcel to be assigned to the subject use, and the proposed outline and location of each and every proposed structure on the subject lot, and the location and length of any proposed driveway from the access street to the building site. There shall also be shown on said plan the existing or proposed sewerage system and all distances necessary to establish full compliance with the Zoning By-law, including frontage, areas proposed to be occupied by buildings or structures, yards and sideline distances. The accuracy of said plan and the information thereon shall be certified by the applicant and shall be staked out on the land and left in place until the final inspections are made.

2. Approval of Applications. The Building Inspector shall not issue a permit for the construction, alteration, reconstruction or relocation of a building or structure if the building or structure as constructed, altered, reconstructed or relocated would be in violation of this By-law, or for a new or altered use of a building, structure or land if the use would be in violation of this By-law, unless the applicant has secured a special permit or Site Plan Review or variance from the Board of Appeals or Planning Board.

3. Enforcement. If the Building Inspector is requested in writing to enforce this By-law against any person allegedly in violation of this By-law, and the Building Inspector declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within fourteen days of receipt of such request.

C. Planning Board Acting as Special Permit Granting Authority (Adopted May 7, 2001, replaces former “C. Flexible Subdivision Plan and Elder Housing Permit “)

The Planning Board shall act as the Special Permit Granting Authority (SPGA) for certain Special Permits as specified in this bylaw, as authorized under M.G.L., Ch. 40A, Sec. 1A and 9. Special Permits filed with the Planning Board shall be approved or disapproved only following a public hearing held within 65 days after the filing of an application with the Planning Board, a copy of which shall forthwith be given to the Town Clerk by the applicant. The Planning Board shall act within 90 days following said public hearing for which notice has been given per M.G.L. Ch. 40A, Sec. 9 and 11. The Planning Board may require the applicant to pay a review fee to cover the reasonable costs of consultants engaged by the Board to assist in review of the proposed plans or documents, as authorized and limited by M.G.L. Ch. 44, Sec. 53G and Sec. IX.H. of this Zoning Bylaw. Special permit approval by the Planning Board shall require a vote of at least 5 members of the 7 member board. Special Permits granted by the Planning Board shall lapse after one year if substantial use or construction as granted by the permit has not commenced, except for good cause. Time required to pursue determination of an appeal shall not be considered part of the one-year limitation.

Construction of a project approved by the Planning Board as SPGA shall be completed within two years of its commencement unless otherwise provided for in the applicable section of this Bylaw, the permit, or in a subsequent amendment of the permit approved by the Planning Board.

D. Common Driveway Permit

The Planning Board shall act as the special permit granting authority for common driveways under Section VI.B.12. of this By-Law. (Added May 13, 1985).

E. Occupancy Permit

No building erected, altered, or in any way changed as to construction or use, under a permit or otherwise, shall be occupied or used without an occupancy permit, signed by the Building Inspector, which permit shall not be issued until the building and its uses, and the uses incident thereto, comply in all respects with this By-law.

F. Appeals

1. Any person aggrieved by his inability to obtain a permit or enforcement action from the Building Inspector and any person, including an officer or board of the Town, aggrieved by an order, decision or failure to act of the Building Inspector or other official in violation of this By-law or Chapter 40A of the Massachusetts General Laws, may appeal to the Board of Appeals by filing a Notice of Appeal with the Town Clerk within thirty (30) days of the date of the action, order or decision.

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2. Section 16 of Massachusetts General Laws Chapter 40A governing repetitive appeals and applications for variances and special exceptions is hereby accepted by the Town of Hamilton.

G. Violations and Penalty

Whoever violates any provision of this By law may be punished by a fine not exceeding one hundred dollars for each offense. Each day or portion thereof that such violation continues shall constitute a separate offense.

SECTION IX. BOARD OF APPEALS.

A. A Board of Appeals consisting of three members and two associate members, all citizens of the Town, shall be appointed by the Selectmen, and shall act as the Board of Appeals under this Zoning By-law and under Massachusetts General Laws, Chapter 40A, Section 12.

B. The Board of Appeals shall have all the powers and perform all of the duties conferred or imposed upon it under the applicable provisions of the General Laws of the Commonwealth of Massachusetts, and is designated the permit granting authority and the special permit granting authority (But see Sec. VIII.C. of this By-law).

C. The Board of Appeals shall adopt rules and procedures not inconsistent with this By-law as required by Section 12, Chapter 40A of the Massachusetts General Laws.

D. The Board of Appeals shall have the following powers:

1. To hear and decide appeals in accordance with Massachusetts General Laws, Chapter 40A, Sections 8 and 15.
2. To hear and decide upon proposals for Site Plan Review and alterations to a non-conforming use. (Added May 18, 1989)
3. To hear and decide applications for special permits and Site Plan Review as provided in this By-law, subject to any general or specific rules therein contained and subject to any appropriate conditions, safeguards and limitations imposed by the Board. A special permit shall be issued only following public hearing held within sixty-five days after filing of an application with the Town Clerk, who shall transmit a copy thereof to the Board of Appeals forthwith. A special permit shall lapse after one year if substantial use or construction, as granted by the permit, has not commenced, except for good cause. Time required to pursue or await the determination of an appeal shall not be considered in determining the one year limitation. When an applicant needs to be heard by the Board of Appeals for both Site Plan Review and a special permit on the use of the structure, the Board shall conduct both processes simultaneously using the time table of the special permit process. (Amended May 18, 1989)
4. To authorize upon appeal, or upon petition in cases where a particular use is sought for which no permit is required with respect to a particular parcel of land or to an existing building thereon a variance from the terms of the By-law where the Board of Appeals specifically finds that owing to circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that the desirable relief may be granted without substantial detriment to the public good and

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without nullifying or substantially derogating from the intent or purpose of this By-law.

5. To require applicants for Special Permits, Site Plan Approval, Variances and/or Comprehensive Permits under M.G.L. Ch. 40B to pay a review fee to cover the reasonable costs of consultants engaged by the Board of Appeals to assist in review of proposed plans, as set forth in Sec. IX.H. of this Zoning By-law. (Added November 13, 1990)

E. Temporary Permits.

The Board of Appeals may grant temporary permits, limited to one year at a time and not to exceed a total of three years, for non-conforming uses or buildings incidental to building operations, and for signs as provided in Section VI.E. of this By-law, if in each case the board finds that the granting of such a temporary permit will not be injurious to persons or to adjacent property.

In any such case, the applicant shall file, with the Inspector of Buildings, a bond in such sum as may be required by the Board of Appeals, together with bill of sale or other assurances to the Town, effective in case any use, building, or structure is not removed prior to the expiration of the permit.

F. In carrying out the provisions of paragraph D and E above, the Board may impose, as a condition of its decision, such restrictions as to manner and duration of use as will in its opinion safeguard the legitimate use of the property in the neighborhood and the health and safety of the public, and conform to the intent and purpose of this By-law as provided in Section 9 of Chapter 40A of the Massachusetts General Laws as amended and such restrictions to be stated in writing by the Board and made a part of the permit.

G. Wherever proceedings under this By-law require the giving of notice by publication in a newspaper, mailing or service by a civil officer, the costs thereof shall be borne by the applicant; and the Board of Appeals shall require estimated costs to be advanced by him.

H. Outside Consultants to Assist Special Permit Granting Authority (This section added November 13, 1990)

1. When reviewing an application for (permit/approval), the Board may determine that the assistance of outside consultants is warranted due to the size, scale or complexity of a proposed project or because of a project's potential impacts. The Board may require that applicants pay a "review fee" consisting of the reasonable costs incurred by the Board for the employment of outside consultants engaged by the Board to assist in the review of an application.

2. In hiring outside consultants, the Board may engage engineers, planners, lawyers, urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all relevant laws, ordinances/bylaws, and regulations.

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3. The Board may estimate the review fee in advance of performance of the consulting work. Funds received by the Board pursuant to this section shall be deposited with the municipal treasurer who shall establish a special account for this purpose.

Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only in connection with the review of a specific project or projects for which a review fee has been or will be collected from the applicant. Failure of an applicant to pay a review fee shall be grounds for denial of the (application/permit).

4. Review fees may only be spent for services rendered in connection with the specific project from which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a specific project, shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant or the applicant's successor in interest. For the purpose of this regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board documentation establishing such succession in interest.

5. Any applicant may take an administrative appeal from the selection outside consultant to the (City Counsel/Board of Selectmen). The grounds for such an appeal shall be limited to claims that the consultant selected has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist either of an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or related field. The required time limit for action upon an application by the board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the (City Counsel/Board of Selectmen) within one month following the filing of the appeal, the selection made by the board shall stand.

SECTION X. AMENDMENTS.

This By-law may be amended at any regular or Special Town Meeting in accordance with the provisions of Section 5 of Chapter 40 A of the Massachusetts General Laws as amended.

SECTION XI. VALIDITY AND CONFLICT OF LAW.

Where this By-law imposes a greater restriction upon the use, height and the area of structures or the use of premises than is imposed by other By-laws, the provisions of this By-law shall control. The invalidity of any section or provision of this By-law shall not invalidate any other section or provision thereof.

APPENDIX A. DESCRIPTION OF R-A DISTRICT

AREA A in the Northwest Sector of the town, bounded a) on the West by the Town of Topsfield; b) on the north by the Town of Ipswich; c) on east by the Boston and Maine R.R.; and d) on the south by a line along the existing boundary between the R-1a and R-1b Districts from the Ipswich River-Topsfield Line to the eastern boundary of Parcel 45-1 Audubon Society, at the southern corner of Parcel 37-43; thence northerly by the property lines between said Audubon Society and Parcels 37-43, 2, 3, 4 and 5 some 1475+ feet to the property line between the Parcels 37-5 and 37-6 and by said property line 260 feet to Asbury Street; thence by a straight line northeasterly across Parcel 20-4 - Totten 1200+ feet to the northwest corner of Parcel 20-8 Pingree; thence easterly by the property line between said Pingree and Totten, 1100+ feet to Highland Street opposite Gail Avenue; thence southeasterly by the center line of Gail Avenue 2000+ feet and the road extending said Avenue southeasterly 1800+ feet to the property line between Parcels 29-1 Willcox and 47-1 McKean, northeasterly 600+ feet, and easterly 500+ feet to the property line between said Parcel 47-1 McKean and 29-4 Pingree, thence easterly by said property line 700+ feet to the Northeast corner of said parcel 47-1, thence by a straight line 1200+ feet to the Boston and Maine Railroad at Black Brook.

AREA B in the Northeast Sector of the Town, bounded a) by Town of Essex on the southeast, east and north; b) by the Town of Ipswich on the north and west, and c) in Hamilton, 1) on the west by the Miles River, and 2) on the south from the Miles River to Sagamore Street by the property line between Parcel 33-2 Roberts and Parcel 33-3 Kenneth Ives, Jr., and from Sagamore Street to the interior corner of the Essex Town Line along the property line between Parcel 33-8 Bradford and Parcel 42-23 Benoit and the rear of lots fronting on Blueberry Lane.

AREA C in the Southeast Sector of the Town, bounded a) by the Town of Essex on the northeast and east; b) by the Towns of Manchester and Wenham on the south, and c) on the north in Hamilton, beginning at the Essex Line, by Chebacco Lake to the brook from Round Pond; thence southwesterly along the northwest property line of Parcel 71-11 (the Town Beach) to Chebacco Road; thence westerly and northwesterly by Chebacco Road to the north corner of Parcel 71-3 Goddard; thence southwesterly by the property line between said Parcel 71-3 and Parcel 70-3 Gordon College 150 feet to the west corner of Parcel 71-3; thence westerly by a straight line 660+ feet to the southeast corner of Parcel 70-1 Caldwell; thence westerly and northerly by the property line between Parcel 70-3 of Gordon College and those of Parcel 70-1 and Parcel 65-1 Country Squire Realty Co. to the southeast corner of 65-3 Guilford; thence westerly 290 feet and northerly 200 feet by the property line between Parcels 70-3 and 65-3 to Essex Street; thence westerly and southerly by Essex Street to the Wenham Town Line.

AREA D in the East-Central Sector of the Town bounded a) on the east by Saganore Street, Old Road, and Bridge Street; and on the south by the property of the Town in which the Town Wells are located, on the west by Miles River and on the north by Moulton Street.

APPENDIX B, “GRANDFATHER CLAUSE”

EXCERPT FROM M.G.L. CHAPTER 40A.

Chapter 40A: Section 6 Existing structures, uses, or permits; certain subdivision plans; application of chapter

Section 6. Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure. Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. This section shall not apply to establishments which display live nudity for their patrons, as defined in section nine A, adult bookstores, adult motion picture theaters, adult paraphernalia shops, or adult video stores subject to the provisions of section nine A.

A zoning ordinance or by-law shall provide that construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance or by-law unless the use or construction is commenced within a period of not more than six months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

A zoning ordinance or by-law may define and regulate nonconforming uses and structures abandoned or not used for a period of two years or more.

Any increase in area, frontage, width, yard, or depth requirements of a zoning ordinance or by-law shall not apply to a lot for single and two-family residential use which at the time of recording or endorsement, whichever occurs sooner was not held in common ownership with any adjoining land, conformed to then existing requirements and had less than the proposed requirement but at least five thousand square feet of area and fifty feet

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of frontage. Any increase in area, frontage, width, yard or depth requirement of a zoning ordinance or by-law shall not apply for a period of five years from its effective date or for five years after January first, nineteen hundred and seventy-six, whichever is later, to a lot for single and two family residential use, provided the plan for such lot was recorded or endorsed and such lot was held in common ownership with any adjoining land and conformed to the existing zoning requirements as of January first, nineteen hundred and seventy-six, and had less area, frontage, width, yard or depth requirements than the newly effective zoning requirements but contained at least seven thousand five hundred square feet of area and seventy-five feet of frontage, and provided that said five year period does not commence prior to January first, nineteen hundred and seventy-six, and provided further that the provisions of this sentence shall not apply to more than three of such adjoining lots held in common ownership. The provisions of this paragraph shall not be construed to prohibit a lot being built upon, if at the time of the building, building upon such lot is not prohibited by the zoning ordinances or by-laws in effect in a city or town.

If a definitive plan, or a preliminary plan followed within seven months by a definitive plan, is submitted to a planning board for approval under the subdivision control law, and written notice of such submission has been given to the city or town clerk before the effective date of ordinance or by-law, the land shown on such plan shall be governed by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of the first such submission while such plan or plans are being processed under the subdivision control law, and, if such definitive plan or an amendment thereof is finally approved, for eight years from the date of the endorsement of such approval, except in the case where such plan was submitted or submitted and approved before January first, nineteen hundred and seventy-six, for seven years from the date of the endorsement of such approval. Whether such period is eight years or seven years, it shall be extended by a period equal to the time which a city or town imposes or has imposed upon it by a state, a federal agency or a court, a moratorium on construction, the issuance of permits or utility connections.

When a plan referred to in section eighty-one P of chapter forty-one has been submitted to a planning board and written notice of such submission has been given to the city or town clerk, the use of the land shown on such plan shall be governed by applicable provisions of the zoning ordinance or by-law in effect at the time of the submission of such plan while such plan is being processed under the subdivision control law including the time required to pursue or await the determination of an appeal referred to in said section, and for a period of three years from the date of endorsement by the planning board that approval under the subdivision control law is not required, or words of similar import.

Disapproval of a plan shall not serve to terminate any rights which shall have accrued under the provisions of this section, provided an appeal from the decision disapproving said plan is made under applicable provisions of law. Such appeal shall stay, pending either (1) the conclusion of voluntary mediation proceedings and the filing of a written agreement for judgment or stipulation of dismissal, or (2) the entry of an order or decree of a court of final jurisdiction, the applicability to land shown on said plan of the

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provisions of any zoning ordinance or by-law which became effective after the date of submission of the plan first submitted, together with time required to comply with any such agreement or with the terms of any order or decree of the court.

In the event that any lot shown on a plan endorsed by the planning board is the subject matter of any appeal or any litigation, the exemptive provisions of this section shall be extended for a period equal to that from the date of filing of said appeal or the commencement of litigation, whichever is earlier, to the date of final disposition thereof, provided final adjudication is in favor of the owner of said lot.

The record owner of the land shall have the right, at any time, by an instrument duly recorded in the registry of deeds for the district in which the land lies, to waive the provisions of this section, in which case the ordinance or by-law then or thereafter in effect shall apply. The submission of an amended plan or of a further subdivision of all or part of the land shall not constitute such a waiver, nor shall it have the effect of further extending the applicability of the ordinance or by-law that was extended by the original submission, but, if accompanied by the waiver described above, shall have the effect of extending, but only to extent aforesaid, the ordinance or by-law made then applicable by such waiver.